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IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE)
COMMISSION,)
)
Plaintiff,) Case No.:
v.) 20-Civ-10832 (AT) (SN)
)
RIPPLE LABS, INC., BRADLEY)
GARLINGHOUSE, and CHRISTIAN)
LARSEN,)
)
Defendants.)
_____)

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

VIDEOTAPED DEPOSITION OF

RYAN ZAGONE

Tuesday, July 20, 2021

Reported by:
BRIDGET LOMBARDOZZI,
CSR, RMR, CRR, CLR
Job No. 210720BLO

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GARLINGHOUSE, and CHRISTIAN)	
LARSEN,)	
)	
Defendants.)	
_____)	

Videotaped deposition of RYAN ZAGONE taken on behalf of Plaintiff, held at the offices of Debevoise & Plimpton, 919 Third Avenue, New York, New York, commencing at 9:12 a.m. and ending at 6:17 p.m., on Tuesday, July 20, 2021, before Bridget Lombardozzi, CCR, RMR, CRR, CLR, and Notary Public of the States of New York and New Jersey, pursuant to notice.

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NEW YORK REGIONAL OFFICE

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 Ripple

DAVID SHERECK, Videographer
Shereck Video Service

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1 - - -

2 9:12 a.m.

3 June 29, 2021

4 - - -

5 THE VIDEOGRAPHER: Okay. We're
6 on the record. Excuse me. We're on the
7 record. The time is approximately 9:12
8 a.m. Today's date is Tuesday, July 20th,
9 2021. This is the video deposition of
10 Ryan Zagone in the matters of
11 Securities -- Securities and Exchange
12 Commission versus Ripple Labs, et al.
13 Index number is 20-Civ-10832 in the United
14 States District Court, Southern District
15 of New York.

16 My name is David Shereck,
17 certified legal videographer with Shereck
18 Legal Video in association with Gradillas
19 Court Reporting of Glendale, California.

20 Today we're at the offices of
21 Debevoise & Plimpton located at 919 Third
22 Avenue, New York, New York.

23 All attorneys that are present
24 will be noted on the stenographic record.

25 The court reporter today is

1 Bridget Lombardozzi, also with Gradillas.

2 And will you please swear in the witness.

3 R Y A N Z A G O N E, having

4 been duly sworn, was examined and

5 testified as follows:

6 DIRECT-EXAMINATION

7 BY MR. HANAUER:

8 Q. Good morning. My name is Ben Hanauer.

9 I represent the plaintiff, the SEC.

10 MR. HANAUER: Counsel, is there a
11 stipulation you want to put on the record?

12 MR. CERESNEY: Yes. Just that
13 a -- an objection by one counsel is an
14 objection -- considered an objection for
15 all counsel.

16 MR. HANAUER: So stipulated.

17 MR. CERESNEY: And one other
18 thing while we're on the record, just that
19 the transcript will be marked
20 confidential. The transcript is to be
21 marked confidential under our protective
22 order.

23 BY MR. HANAUER:

24 Q. Sir, could you please state your name
25 for the record.

1 A. Ryan Zagone.

2 Q. Is there any reason you cannot give
3 accurate deposition testimony today?

4 A. No.

5 Q. And how many preparation sessions did
6 you have for today's deposition?

7 A. I had a couple with my counsel and a
8 couple with Ripple's counsel.

9 Q. And in total, how much time did you
10 spend preparing with attorneys for today's
11 deposition?

12 A. A couple calls each.

13 Q. Can you give me a --

14 A. A couple hours on each call.

15 Q. Okay. Thank you.

16 Have you --

17 THE REPORTER: Excuse me. Could
18 the witness put the mic on your tie? It's
19 hard to hear you. Thank you.

20 THE WITNESS: Is that better?

21 BY MR. HANAUER:

22 Q. And have you ever been deposed or given
23 testimony in a lawsuit before?

24 A. No.

25 Q. Can you please tell me about any

1 education you've had since high school?

2 A. I went to undergrad at a small liberal
3 arts school in Mississippi.

4 Q. Which one?

5 A. Millsaps College.

6 Q. Is that the extent of your education
7 since high school?

8 A. Yes.

9 Q. And did you graduate from college?

10 A. I did.

11 Q. And what did you major in?

12 A. Economics.

13 Q. Are you an attorney?

14 A. No.

15 Q. Have you ever been an attorney?

16 A. No.

17 Q. During what time period did you work for
18 Ripple Labs, Inc.?

19 A. I joined in 2014, late 2014, and I left
20 in July 2019.

21 Q. And going forward just to save some
22 time, do you understand if I say "Ripple," I'm
23 referring to the defendant in this case, Ripple
24 Labs, Inc.?

25 A. Yep.

1 Q. Okay. And where did you -- where did
2 you work before Ripple?

3 A. I started my career at the [REDACTED]
4 [REDACTED] Focused on policy and
5 economics.

6 Q. And when you say started your career,
7 you did that right out of college?

8 A. Correct.

9 Q. And how long were you at the [REDACTED]
10 [REDACTED]

11 A. Four years and nine months, around
12 there, under five years.

13 Q. And what did you do for the [REDACTED]
14 [REDACTED]

15 A. I sat on the policy team analyzing
16 regulatory proposals from the Fed, FDIC and OCC.
17 And I did that for three years. And then I left
18 there to go -- I was on the communications team,
19 focused on payments and mortgages.

20 Q. And where did you work after that?

21 A. I went to [REDACTED] on their financial
22 services practice.

23 Q. And what did you do at [REDACTED]

24 A. I researched -- I was on a team that
25 looked at emerging issues for the banking

1 industry. Focused on retail, then strategy and
2 payments.

3 Q. Was that on the consulting side?

4 A. It was a research team that worked with
5 consulting and advisory.

6 Q. And how long were you at [REDACTED] for?

7 A. Two years.

8 Q. Okay. And where did you work at after
9 [REDACTED]

10 A. Left [REDACTED] and joined Ripple.

11 Q. And after you left Ripple, where did you
12 go to work after that?

13 A. I took a year off after Ripple, a year,
14 18 months off. Had some side projects that I was
15 working on unrelated to Fintech. And in September
16 2020 returned to the payment space.

17 Q. And where -- where did you go to work
18 after --

19 A. I worked at -- I'm sorry.

20 Q. And I should have said this earlier.
21 One of the important things to remember during
22 this deposition is we can't speak over each other
23 for -- for the court reporter, so I would just ask
24 to please wait until I'm done asking my questions
25 before you start to answer and I'll try and do the

1 same with you.

2 A. I joined a company called [REDACTED]
3 now referred to as [REDACTED] We're an international
4 payments company. I lead our North America
5 practice for our partnerships with banks.

6 Q. And does your cur -- and does your
7 current employer do business with Ripple?

8 A. No.

9 MR. CERESNEY: Objection to form.

10 Q. Has it --

11 A. No.

12 Q. Has your current employer done business
13 with Ripple since you started working there?

14 A. No.

15 Q. Why did you leave Ripple?

16 A. My role was terminated.

17 Q. And do you have an understanding why
18 your role was terminated?

19 A. New leadership was brought in and my
20 understanding was they wanted to bring in new
21 people and move the role from New York to D.C.

22 Q. And when you say "new leadership," who
23 was the new leadership that came in?

24 A. New general counsel and new head of
25 regulatory relations.

1 Q. Were you terminated for cause?

2 MR. CERESNEY: Objection to form,
3 foundation.

4 Q. You can answer.

5 A. I don't fully know what that means. I
6 had a strong performance record.

7 Q. So -- so it's your understanding that
8 your -- the reason you were let go, it didn't have
9 anything to do with your job performance, but the
10 new management wanted to bring in the new team?

11 A. Correct.

12 MR. CERESNEY: You need to pause
13 for a second so that I have a chance to
14 object. That's fine.

15 THE WITNESS: Okay.

16 BY MR. HANAUER:

17 Q. Are you still friends with any Ripple
18 employees?

19 A. Not current employees.

20 Q. Who are you still friends with that used
21 to be a Ripple employee?

22 A. There are four people that I stay in
23 contact with that are former employees.

24 Q. Could you name them, please?

25 A. Sure. [REDACTED]

1 [REDACTED] from the media team and [REDACTED]

2 [REDACTED] also from the media team.

3 Q. Do you know [REDACTED]'s last name?

4 A. [REDACTED]

5 Q. And are those the only current or former
6 Ripple employees that you are still friends with?

7 A. Yes.

8 Q. Have you had discussions with any of
9 those four individuals about this lawsuit?

10 A. No.

11 Q. Can you please describe how you came to
12 work at Ripple?

13 A. While at [REDACTED] in my last year there,
14 I began researching the way banks could use crypto
15 and blockchain technology. We wrote a paper, did
16 some -- some internal research. In that period, I
17 was meeting with different crypto and blockchain
18 companies. One of those companies was -- was
19 Ripple.

20 So we began talking with them about the
21 ways -- my interest is in how banks could use the
22 debt. Most of the companies in the space at this
23 time were very consumer focused. So I developed a
24 relationship with -- with some folks at Ripple
25 that were based in New York. That progressed over

1 about six months and over lunch they offered me a
2 role to come on full time.

3 Q. And who was it at Ripple that offered
4 you the job?

5 A. Patrick Griffin.

6 Q. What was his job at Ripple?

7 A. He was head of business development at
8 the time.

9 Q. And when you joined Ripple, what was
10 your job title?

11 A. It was head of research on the business
12 development team.

13 Q. And what were your responsibilities in
14 that role?

15 A. My role was to map out what type of
16 products we needed to build to work with banks and
17 financial institutions for cross-border payments,
18 to segment the market, and to research and
19 understand the pain points that banks faced.

20 Q. And who did you report to in that
21 position?

22 A. Patrick Griffin.

23 Q. And how long did you hold that position
24 at Ripple for?

25 A. I was in that position for nine months

1 to a year.

2 Q. And then what was your next position at
3 Ripple?

4 A. Then I moved to the regulatory relations
5 role.

6 Q. And what specifically was your title at
7 that point?

8 A. It was director of regulatory relations.

9 Q. And who did you report to as director of
10 regulatory relations?

11 A. Antoinette O'Gorman.

12 Q. And is Ms. O'Gorman an attorney?

13 A. No.

14 Q. And who did Ms. O'Gorman report to?

15 A. Brad Garlinghouse, the CEO.

16 Q. And how long did you hold the role of
17 director of regulatory relations?

18 A. Through the end of my term there.

19 Q. Are you a Ripple shareholder?

20 A. Yes.

21 Q. Since when?

22

23

24

25

1 Q. And how many shares do you currently
2 own?

3 A. I currently own around [REDACTED]

4 Q. And did you continue to receive shares
5 over the course of your employment?

6 A. I did.

7 Q. Have you ever sold your -- any of your
8 Ripple shares?

9 A. I have.

10 Q. And how did you go about selling them?
11 Like, what markets were they on, if any? How --
12 how did you make that happen?

13 MR. CERESNEY: Objection to form.
14 You can answer.

15 A. I sold my shares through a -- through a
16 broker, a third-party broker.

17 Q. Okay. So -- and I just want to make
18 sure I'm clear on this -- you received [REDACTED]
19 shares over the course of your employment?

20 A. No, by the time I left, I had vested
21 around [REDACTED] to [REDACTED] shares. I exercised about
22 [REDACTED] of them.

23 Q. Okay. And so when you sold your Ripple
24 shares, how much money did you receive for selling
25 them?

1 A. Around [REDACTED]

2 Q. And just so I'm clear, you still own
3 approximately [REDACTED] shares?

4 A. Correct.

5 Q. Have you ever received XRP as part of
6 your compensation?

7 A. Not as part of my compensation.

8 Q. Have you obtained XRP in another way?

9 A. I received XRP for reimbursements,
10 company reimbursements.

11 Q. Like if you incurred business expenses,
12 you would be repaid -- or recompensated in XRP?

13 A. Correct.

14 Q. Is that the only way in which you've
15 obtained XRP?

16 A. I've also bought XRP on the open market,
17 on an exchange.

18 Q. And when did you buy XRP on an exchange?

19 A. In 20 -- around 2017 or 2018, in that
20 time period.

21 Q. And why did you buy XRP on an exchange?

22 A. The -- the whole crypto market was going
23 up. I wanted exposure to that.

24 Q. You hoped that the XRP would rise in
25 value after you bought it?

1 A. Correct.

2 Q. Do you still own XRP?

3 A. No.

4 Q. When did you sell your XRP holdings?

5 A. If -- two transactions: The first in
6 20 -- in late 2018/early 2019 time frame and the
7 second in the summer of 2020.

8 Q. Did you profit from your sales of XRP?

9 A. On one transaction I did.

10 Q. And how much money did you make?

11 A. 

12 

13

14

15

16

17

18

19 A. Correct.

20 Q. Going back to your -- your ownership of
21 Ripple shares, who did you sell your shares to?

22 A. I -- I don't know. It was through a
23 broker.

24 Q. So as director of regulatory relations
25 at Ripple, can you tell me what your job

1 responsibilities were?

2 A. The primary work in this role was to
3 work with our banks and their -- our banking
4 clients, the banks that were using our products,
5 and their regulators to get Ripple approved as a
6 vendor. So we would go through vendor due
7 diligence and meet the vendor expectations of the
8 bank and their regulator.

9 The second portion of that role was to
10 drive policy that would support the use of
11 blockchain and crypto and Ripple's products within
12 the financial sector.

13 Q. Did your responsibilities change over
14 time while you were director of regulatory
15 relations?

16 A. No.

17 Q. As part of your job responsibilities,
18 did you meet with regulators from various
19 countries?

20 A. Yes.

21 Q. When you met with regulators, was it
22 your practice to take notes of those meetings?

23 A. Yes.

24 Q. Did you save your notes?

25 A. Yes.

1 Q. And have you heard of something called
2 the Confluence system?

3 A. At Ripple?

4 Q. At Ripple, correct.

5 A. Oh. Yes.

6 Q. And what's that?

7 A. It's an internal website we used for
8 sharing notes or documenting details about Ripple.

9 Q. And so when you took notes of your
10 meetings with regulators, did you upload those
11 notes to the Confluence system so that other
12 Ripple employees could review them?

13 A. I wasn't a heavy user of Confluence. I
14 took my notes in Google Docs and saved them in a
15 folder in Google, Google Drive.

16 Q. Okay. Do you know if your notes were
17 available to other Ripple employees to review?

18 A. They were saved on the company drive so
19 other people may or may not have had access to it.

20 Q. Were -- at the time you left Ripple,
21 were your meeting notes still saved on Google
22 Drive?

23 A. Correct.

24 Q. And I think I've been asking you about
25 notes of meetings with regulators.

1 Were there other types of notes that you
2 saved -- that you took and saved on Google Drive?

3 MR. HECKER: Objection to form.

4 THE WITNESS: Continue to answer?

5 MR. HECKER: You can answer.

6 A. I generally stored all my notes on
7 Google Drive.

8 Q. So it sounds like you took notes of
9 meetings other than meetings with regulators?

10 MR. HECKER: Objection to form.

11 You can answer.

12 A. Correct.

13 Q. Besides your deposition here today, have
14 you ever communicated with the SEC, its
15 Commissioners or its staff?

16 A. No.

17 Q. While you worked at Ripple, were you a
18 member of any organizations outside of Ripple?

19 A. I was.

20 Q. Which ones?

21 A. I served on the steering committees for
22 the Federal Reserves Master Payments Task Force.
23 I was elected to -- elected to that role by the
24 industry. So that was a board of -- I believe it
25 was 13 individuals who set the strategy for faster

1 payments in the U.S.

2 I served on the advisory boards for the
3 CSBS, the Conference of State Bank Supervisors.
4 It's actually a group of state bank regulators.
5 It was an advisory boards on innovation in
6 Fintech.

7 Q. How did you come to be on that board?

8 A. I -- I applied to that role and was
9 selected by CSBS.

10 And, third, I served as the -- as an
11 advisor to the Better Than Cash Alliance. That's
12 an alliance at the United Nations to drive digital
13 payments in developing countries.

14 Q. And can you tell me a little bit more
15 about the Federal Reserve task force you were on?

16 A. Sure. In 20 -- around 2017, the Federal
17 Reserve started a industry task force to drive
18 faster payments in the U.S., so improved payment
19 infrastructure. It was about 300 participants
20 from the industry that signed up. They recognized
21 a need to have a leadership committee to steer
22 this and created an open election.

23 I put my name forth to represent the
24 technology sector, so everything from Google
25 through Visa.

1 I won that election and represented the
2 technology industry on that steering committee.

3 Q. And did Ripple support your candidacy?

4 A. Yes.

5 Q. And do you know if the other technology
6 companies who participated on the board, do you
7 know if they coordinated with Ripple to try and
8 get you elected?

9 MR. HECKER: Objection to form.

10 A. I -- I don't know what the other
11 companies did. I reached out to my counterparts
12 at the other technology companies to let them know
13 I was running, let them know our views on
14 payments, to see if we aligned. And then I was
15 elected from there.

16 Q. Did personnel from any of the other
17 technology companies on the steering committee run
18 in that election?

19 A. There were four seats that represented
20 the technology sector so I was one of four
21 representing.

22 Q. Do you know how many candidates there
23 were for the -- those four technology sector
24 seats?

25 A. I don't.

1 Q. As Ripple's director of regulatory
2 relations, were you familiar with Ripple's
3 business?

4 MR. HECKER: Objection to form.

5 A. I was familiar with our -- our products
6 that we were selling.

7 Q. Were you familiar with XRP?

8 A. Yes. Familiar in that it was a -- a
9 piece of technology that was within one of our
10 products.

11 Q. And -- and just for the record, what is
12 XRP?

13 A. XRP's a digital currency that Ripple
14 used within our liquidity product to connect
15 currencies more efficiently.

16 Q. As Ripple's director of regulatory
17 relations, were you familiar with how Ripple
18 generated revenues?

19 A. I was.

20 Q. Did you ever act as a spokesperson for
21 Ripple?

22 A. I did.

23 Q. And did you ever make public
24 announcements about Ripple?

25 MR. CERESNEY: Objection; form.

1 A. I -- I never made a public announcement,
2 like, releasing news about Ripple. I would repeat
3 news that our communications team had released.

4 Q. Okay. Repeat it to who?

5 A. Either speaking at a panel or a
6 conference or on social media.

7 Q. And when you spoke on a panel or at a
8 conference, you did so as a Ripple representative?

9 A. Yes.

10 Q. Did you ever provide interviews to the
11 media?

12 A. I did.

13 Q. And when you acted as a Ripple
14 spokesperson via social media, how did -- how did
15 that work?

16 MR. HECKER: Objection to form.

17 A. I used social media to share news about
18 the company, so press releases, new partners,
19 views on regulation that we saw coming forth.
20 There was talk around policy and how -- which
21 policy we needed to take for this new technology.

22 Q. I don't want to get in -- into any
23 specifics of any conversation you had with an
24 attorney, but I -- I -- I just want to ask this
25 general question: Have you ever received guidance

1 from attorneys about how to talk about Ripple and
2 XRP when speaking publicly on Ripple's behalf?

3 MR. HECKER: So object to the
4 form of the question.

5 But you can answer that question
6 either yes or no if you understand it.

7 A. Can you repeat the question?

8 MR. HANAUER: Can you read it
9 back, please?

10 (Whereupon, the record was read
11 back.)

12 A. Yes.

13 Q. And when did you start receiving that
14 guidance?

15 MR. HECKER: Objection to form.

16 You can answer.

17 A. I can't recall the exact date I started
18 receiving guidance from the legal team on XRP.

19 Q. So I take it you received guidance
20 from -- well, did you receive guidance from
21 internal Ripple attorneys about how to speak
22 publicly about Ripple and XRP?

23 MR. HECKER: Same -- same
24 objections.

25 You can answer that yes or no.

1 A. The -- the primary guidance I
2 received --

3 MR. CERESNEY: I think Mr. Hecker
4 instructed you to answer that yes or no.

5 A. Oh, yes or no. Yes.

6 Q. And who were the internal Ripple
7 attorneys that provided you guidance about how to
8 speak publicly about Ripple and XRP?

9 A. [REDACTED]

10 Q. Anyone else?

11 A. Those are the two I recall.

12 Q. What about outside attorneys, non--
13 non-Ripple attorneys?

14 MR. HECKER: Object to form.

15 But you can -- you can answer.

16 A. No.

17 Q. Let me just make a better record.

18 Did you ever receive guidance from
19 non-Rip -- attorneys who didn't work at Ripple
20 about how to speak publicly about Ripple or XRP?

21 A. No.

22 Q. Did you ever receive guidance from
23 nonattorneys about how to talk about Ripple and
24 XRP when speaking publicly on Ripple's behalf?

25 MR. HECKER: Objection to form.

1 And I would just caution the
2 witness that to the extent that a
3 guidance was provided in discussions with
4 counsel, that that would still be a
5 privileged conversation.

6 So I think you should understand
7 the question to be asking about guidance
8 he received outside the presence of
9 counsel about this topic.

10 MR. HANAUER: Yeah, that's fair.

11 BY MR. HANAUER:

12 Q. You can answer.

13 A. Yes.

14 Q. And who provided that guidance?

15 A. The communications team.

16 Q. Who was on the communications team?

17 A. It was a team run by Monica Long. There
18 was a variety of people on that team. It changed
19 over time.

20 Q. And when did the communications team
21 start providing you guidance about how to talk
22 about Ripple and XRP when speaking publicly?

23 A. When I began to serve as a public
24 spokesperson.

25 Q. And when was that?

1 A. I believe that was around 2016.

2 Q. What did the communications team tell
3 you about how you should go about speaking about
4 Ripple and XRP when speaking publicly?

5 A. I received a public speaking packet, a
6 prep packet. It generally had three topics in it:
7 Recent news that the company released so it could
8 stay current on -- on recent statements; two, what
9 competitors were doing; and, three, context on the
10 event. There was generally an FAQ section at the
11 end about facts about Ripple.

12 Q. Did you ever receive guidance from
13 Ripple's public relations -- public relations
14 firms?

15 A. I did.

16 Q. Which firms?

17 A. [REDACTED] is the primary one. We had an
18 events team as well. [REDACTED]

19 Q. Did you ever receive guidance from
20 nonattorneys about talking about XRP not being a
21 security or not being subject to regulation by the
22 SEC?

23 MR. HECKER: Objection to form.

24 And the same -- same caveat
25 would apply. Outside the presence of

1 counsel.

2 A. No.

3 Q. Did you ever receive guidance from
4 nonattorneys about the issue of whether XRP was a
5 security or not?

6 MR. HECKER: Same -- same caveat.

7 You can answer.

8 A. No.

9 Q. Did you ever receive -- okay.

10 Did you ever receive guidance about how
11 to talk about Ripple and XRP as they relate to the
12 SEC?

13 MR. HECKER: Are you -- are you
14 excluding discussions with counsel again?

15 MR. HANAUER: Yes.

16 A. No.

17 Q. Did you ever provide guidance to Ripple
18 personnel about how to talk publicly about Ripple
19 and XRP as they relate to the SEC?

20 A. I worked with legal to --

21 Q. And --

22 MR. HECKER: Yeah.

23 Q. -- I -- I don't want to get into your
24 communications with -- with lawyers, so --

25 MR. HECKER: Why don't -- why

1 don't you start -- maybe answer that
2 question with a yes or no. And then maybe
3 you can lay a foundation to try and make
4 sure you're not capturing discussions with
5 counsel.

6 BY MR. HANAUER:

7 Q. Yeah. So did you ever provide guidance
8 to Ripple personnel about how to talk publicly
9 about Ripple and XRP as they relate to the SEC?

10 A. Yes.

11 Q. Did you ever provide that guidance to
12 Ripple personnel outside the presence of counsel?

13 A. No.

14 Q. When you started working at Ripple, what
15 was your understanding of the SEC's position as to
16 whether the SEC considered XRP to be a security?

17 A. When I started at Ripple, I was on the
18 business development team, so that was outside of
19 my focus. I did not have an understanding of that
20 topic.

21 Q. And at some point did you gain an
22 understanding that how the SEC viewed XRP was
23 important for Ripple?

24 MR. HECKER: Objection to form.

25 A. Yes.

1 Q. Okay. How did you gain that
2 understanding?

3 MR. HECKER: And, again, you
4 know, to the extent that it's through
5 discussions with counsel --

6 THE WITNESS: Uh-huh.

7 MR. HECKER: -- that's privileged
8 and I'll instruct you not to answer that
9 question.

10 A. Discussions with counsel in 2016 and
11 the -- a growing coverage in the media around how
12 digital assets would be classified.

13 Q. Okay. So outside of your communications
14 with counsel, when did you first learn that how
15 the SEC viewed XRP would be important for Ripple's
16 business?

17 MR. HECKER: Objection to form;
18 foundation.

19 A. In late -- I'd say it was in 2017.

20 Q. And so in late 2017, what was your
21 understanding of the SEC's position as to whether
22 it considered XRP to be a security? And, again, I
23 don't want to know anything that an attorney told
24 you.

25 MR. HECKER: I'm not sure it's

1 possible to parse that. He may have had
2 some discussion with counsel or may have
3 read about it in the press. But if his
4 understanding is based on both, then it's
5 going to be difficult to tease out the
6 nonprivileged portion of it.

7 MR. HANAUER: Well, let's give it
8 a try.

9 MR. CERESNEY: Well, I'm going to
10 instruct you not to answer the question to
11 the extent that your understanding was
12 based on discussions with counsel in -- in
13 whole or in part.

14 A. The media coverage was about digital
15 assets in general. It wasn't specific to XRP.
16 And then my XRP knowledge came from legal.

17 Q. So coming from the media, what was your
18 understanding in 2017 as to whether the SEC
19 considered XRP to be a security?

20 MR. HECKER: Objection to form;
21 foundation. I think he just said that his
22 public discussion was based on digital
23 assets generally, not XRP.

24 MR. HANAUER: Yeah, that's fair.
25 I'll lodge a different question.

1 BY MR. HANAUER:

2 Q. So what was your understanding in 2017
3 based on what you read in the media as to whether
4 the SEC considered digital assets to be
5 securities?

6 A. The media coverage at the time was
7 asking what the proper regulatory framework should
8 be for crypto broadly. There wasn't a specific
9 conclusion to come from them. It was more of an
10 open question.

11 Q. And in 2017, did you understand that
12 there was a public debate on the issue of whether
13 certain assets should be -- should be considered
14 securities by the SEC?

15 MR. CERESNEY: Objection; form.

16 A. Could you repeat the question, please?

17 Q. Yeah.

18 In 2017, did you understand that there
19 was a public debate on the issue of whether
20 certain assets should be considered securities
21 by -- certain digital assets should be considered
22 securities by the SEC?

23 A. In that time frame, the conversation was
24 more broad than just the SEC. It was about how
25 countries should be treating digital assets and

1 blockchain technology broadly and -- and
2 generally.

3 Q. Was one of your responsibilities at
4 Ripple to attempt to have the SEC decide that XRP
5 was not a security?

6 MR. CERESNEY: Objection; form.

7 A. The engagement we did with regulatory
8 bodies, with industry groups, was more on
9 education about what XRP was and how it functions.
10 It was -- it was an education effort.

11 Q. Did Ripple make efforts to try and
12 convince the SEC to decide that XRP was not a
13 security?

14 MR. CERESNEY: Objection; form.

15 MR. HECKER: Objection; form.

16 A. I never met with the SEC. I can speak
17 for myself.

18 Q. And I appreciate that. My question's a
19 little broader about meetings with the SEC or your
20 meetings with the SEC. And that's -- did you have
21 an understanding of -- of whether Ripple ever
22 attempted to try and have the SEC decide that XRP
23 was not a security?

24 MR. HECKER: Objection to form.

25 MR. CERESNEY: I also want to

1 instruct you on this, that there could be
2 discussions with counsel. I just want to
3 just make sure you're not revealing those.

4 A. My engagement was around education of
5 what XRP was, the company's view. And that edu --
6 that engagement was -- was broad in the industry.
7 It wasn't specific with the SEC.

8 Q. Were you aware that other Ripple
9 personnel were meeting with the SEC?

10 MR. CERESNEY: Again, I'd just
11 instruct you not to reveal information you
12 obtained from counsel. So the question
13 should be interpreted as other than
14 discussions with counsel, were you aware
15 of that?

16 A. No.

17 Q. Did you ever talk to Mr. Garlinghouse
18 about his meetings with the SEC?

19 A. No.

20 Q. Did you ever communicate with
21 Mr. Garlinghouse about his communications with the
22 SEC?

23 A. No.

24 Q. Do you have any understanding of what
25 was said at any meeting between the SEC and anyone

1 from Ripple?

2 MR. HECKER: Same -- same caveat.

3 A. No.

4 MR. HECKER: If you had awareness
5 through counsel, you are not to disclose
6 that.

7 MR. CERESNEY: Also objection to
8 form.

9 BY MR. HANAUER:

10 Q. Did you have any role in helping Ripple
11 personnel prepare for meetings with the SEC or its
12 staff?

13 A. No.

14 Q. Do you know who at Ripple interacted
15 with the SEC, its Commissioners or its staff?

16 MR. HECKER: Same caveat. You
17 can answer.

18 A. Yes.

19 Q. And who at Ripple interacted with the
20 SEC, its Commissioners or its staff?

21 A. It's my understanding that Brad
22 Garlinghouse had engaged with the SEC along with
23 counsel.

24 Q. Counsel for Ripple?

25 A. Yeah.

1 Q. What was your understanding of what
2 Mr. Garlinghouse was trying to accomplish when he
3 met with the SEC?

4 MR. HECKER: Objection to form.

5 To the extent information you
6 have about those meetings or the
7 objectives of those meet -- those
8 meetings came from discussion with
9 counsel, those are privileged.

10 THE WITNESS: Okay.

11 A. That would be privileged.

12 Q. So the only understanding you have of
13 what Mr. Garlinghouse was trying to accomplish
14 when he met with the SEC came through counsel?

15 A. Yes.

16 Q. Did anyone from Ripple ever try to get
17 the SEC, any of its staff or any of its
18 Commissioners, to publicly state that XRP was not
19 a security?

20 MR. HECKER: Same caveats.

21 A. Not that I was aware of.

22 Q. Did Ripple ever seek a formal SEC
23 statement that XRP was not a security?

24 MR. WARD: Objection to form.

25 A. Not that I was directly aware.

1 Q. What do you mean when you say "directly
2 aware" of?

3 A. Not that I was aware of.

4 Q. Did anyone ever -- anyone who wasn't an
5 attorney ever tell you that Ripple had tried to
6 seek a formal statement from the SEC that XRP was
7 not a security?

8 MR. CERESNEY: Objection to form.

9 A. No.

10 Q. Do you know what an SEC no action letter
11 is?

12 A. Yes.

13 Q. And what's your understanding of an SEC
14 no action letter?

15 A. It's a letter that a company can request
16 to get regulatory assurance that what they're
17 doing isn't out of line with the SEC rules.
18 They're not going to take action against you.

19 Q. Did Ripple ever submit a no action
20 letter request to the SEC?

21 MR. CERESNEY: Objection to form.

22 A. Not that I recall.

23 Q. Were you ever part of discussions not
24 involving attorneys on the issue of whether Ripple
25 should seek a no action letter from the SEC?

1 MR. HECKER: Objection to form.

2 A. Not that I recall.

3 Q. Did Ripple employ lobbyists to interact
4 with the SEC?

5 MR. CERESNEY: I'm -- I'm going
6 to let him answer this first question. I
7 want to put counsel on notice, though,
8 that we're going to object to any
9 questions about lobbying activities by
10 Ripple in light of Judge Netburn's order
11 on that issue.

12 MR. HANAUER: That's understood
13 and I still may try and explore the issue
14 a little bit.

15 MR. CERESNEY: You can. We will
16 object and I'll instruct him not to
17 answer.

18 A. So the question --

19 MR. CERESNEY: If the question is
20 a yes or no, did they, then that's fine.
21 I'll let you ask that question.

22 A. Did Ripple employ lobbyists to engage
23 with the SEC?

24 Q. Correct.

25 A. We employed lobbyists, but they were not

1 directed at the SEC.

2 Q. Did Ripple employ lobbyists relating to
3 the SEC?

4 MR. HECKER: Objection to form.

5 A. The lobbyists we employed were focused
6 on the Hill and the various bills that were being
7 floated around how to classify blockchain or -- or
8 crypto frameworks.

9 Q. And what did Ripple employ those
10 lobbyists to accomplish?

11 MR. CERESNEY: I'm -- I'm going
12 to object on the basis that Judge Netburn
13 has ruled that lobbying activities by
14 Ripple are not relevant in this matter and
15 I'm going to instruct the witness not to
16 answer that question for that reasons.

17 Next question.

18 MR. HANAUER: Okay. Can you --
19 so you're not letting the witness answer
20 questions relating to the substance of
21 Ripple's lobbying efforts?

22 MR. CERESNEY: Yes, in light of
23 Judge Netburn's June 15, 2021 order, in
24 which Judge Netburn said that "The SEC's
25 request to compel production of documents

1 related to Ripple's lobbying efforts is
2 denied. As discussed in the Court's
3 earlier opinion and order denying access
4 to Ripple's privileged communications,
5 Ripple's fair notice defense centers on
6 activities of the SEC, not its own
7 behaviors," and citing a couple of things.
8 The last sentence says "In the same vein,
9 Ripple's lobbying efforts regarding the
10 status of XRP are not relevant; and any
11 relevancy argument is outweighed by the
12 burden of production."

13 In light of that ruling, we
14 would object to any questions about that
15 issue and I am instructing the witness
16 not to answer.

17 MR. HANAUER: Okay. Can you
18 please mark that portion of the testimony?
19 Thank you.

20 Will you instruct the witness
21 not to answer any questions related to
22 the substance of Ripple's lobbying
23 efforts?

24 MR. CERESNEY: Yes.

25 BY MR. HANAUER:

1 Q. Did Ripple employ any other consultants
2 other than lobbyists related to the SEC?

3 MR. HECKER: Objection to form.

4 A. No, not that I'm aware of.

5 Q. Did Ripple make efforts to convince
6 Congress to pass legislation that would determine
7 that XRP is not a security?

8 MR. CERESNEY: Objection. Again,
9 this relates to lobbying efforts
10 presumably. Are you asking about efforts
11 that don't relate to lobbying? Is that
12 what you're asking?

13 MR. HANAUER: Any efforts.

14 MR. CERESNEY: Okay. So I will
15 instruct the witness other than anything
16 that might relate to lobbying, are you
17 aware of any other efforts?

18 THE VIDEOGRAPHER: No.

19 MR. HANAUER: And you're
20 instructing the witness not to answer the
21 question as it relates to lobbying?

22 MR. CERESNEY: Yes.

23 Q. Did Ripple make lobbying efforts related
24 to the SEC directed to the executive branch?

25 MR. CERESNEY: Objection. Same

1 objection. And if you're asking about
2 lobbying activities to the executive
3 branch, I'm going to instruct him not to
4 answer.

5 MR. HANAUER: Step one was a yes
6 or no.

7 MR. CERESNEY: Okay. Why don't
8 you answer that yes or no.

9 A. Did we make lobbying efforts directed at
10 the executive branch? That was the question?

11 Q. Correct. Related to the SEC. Lobbying
12 or -- let me start over.

13 A. Okay.

14 Q. Did -- did Ripple make lobbying efforts
15 relating to the SEC directed at the executive
16 branch?

17 MR. CERESNEY: And I'm just going
18 to object on form.

19 You can answer it yes or no as
20 far as you know.

21 A. No.

22 Q. What is the Ripple protocol?

23 A. The Ripple protocol or -- or the name
24 that was involved in XRP protocol was the
25 open-source ledger that -- that runs XRP.

1 Q. So is the Ripple protocol and the XRP
2 protocol the same thing?

3 A. The names have evolved over time. How I
4 think about that is the XRP protocol is what --
5 what it would be today.

6 Q. So are the term -- as you understand it
7 or as you use the terms, is the Ripple protocol,
8 does it mean the same thing as the XRP protocol?

9 A. How I use the term is -- XRP protocol is
10 the code that runs the XRP ledger.

11 Q. And how is that different from the
12 Ripple protocol?

13 A. Ripple protocol could be the same thing.
14 It could be the name for our -- the company's
15 products. The names have evolved significantly
16 over time and I'm not close to how they use the
17 terms today, how the company's using those terms
18 today.

19 Q. Did Ripple create the Ripple protocol?

20 MR. HECKER: Objection to form.

21 A. Ripple did not create the XRP ledger,
22 XRP protocol, if that's what you're asking.

23 Q. Did Ripple develop XRP?

24 A. No.

25 MR. HANAUER: Did you get an

1 answer?

2 MR. HECKER: He said no.

3 THE REPORTER: There's a delay.

4 MR. HANAUER: Oh, okay, I'm
5 sorry. There we go.

6 Twenty-nine. There are going to
7 be leftovers, I'm quite sure. Did you
8 get one for the court reporter? There
9 are definitely enough.

10 (Whereupon, exhibit is presented
11 and marked SEC Zagone Exhibit RZ-29 for
12 identification.)

13 MR. HANAUER: So I just tendered
14 the witness a document labeled Exhibit
15 RZ-29, which begins with a Bates number
16 ending in 4881.

17 BY MR. HANAUER:

18 Q. And, Mr. Zagone, is Exhibit RZ-29 an
19 e-mail and an attach -- and attachment that you
20 sent to [REDACTED] on December 18th, 2014?

21 A. Correct.

22 Q. And who is Mr. [REDACTED]

23 A. Mr. [REDACTED] was also on the business
24 development team.

25 Q. And you were forwarding Mr. [REDACTED] an

1 e-mail and attachment that Ripple had sent to the
2 British Treasury?

3 A. That's correct.

4 Q. And why was Ripple submitting
5 information to the British Treasury?

6 MR. CERESNEY: I'd instruct the
7 witness just to take a moment to look at
8 the document.

9 (Pause)

10 A. It appears the company was responding to
11 a call from -- for information from HM Treasury.

12 Q. And HM Treasury, that's the British
13 Treasury?

14 A. Correct.

15 Q. And when Ripple submitted information to
16 the British Treasury, did Ripple provide truthful
17 and accurate information?

18 A. I -- I assume so.

19 Q. And I want to refer you to the page --
20 it's the second page of the submission, the page
21 ending in -- a Bates number ending in 883. And
22 the second full paragraph says "Ripple Labs is the
23 parent company that created and supports the
24 Ripple protocol - an open-source, distributed
25 payment protocol for accounting for financial

1 balances held within and moved between ledgers.
2 The Ripple protocol enables payment in any fiat or
3 virtual currency, including the math-based virtual
4 currency developed by Ripple Labs, XRP."

5 Do you see that?

6 A. I see that.

7 Q. So Ripple was representing to the
8 British Treasury that Ripple developed XRP --

9 MR. CERESNEY:

10 MR. WARD: Hold on for a moment.

11 I would just inform the sound isn't coming
12 through on the Zoom.

13 MS. GRESSEL: Jorge, we just got
14 an e-mail.

15 THE WITNESS: I wonder if it's
16 because I moved the mic. Maybe?

17 MS. GRESSEL: Can folks on --

18 MR. HECKER: Are you able to hear
19 now?

20 MS. GRESSEL: Maureen, if you
21 can see us --

22 MR. HANAUER: Let's go off the
23 record, please.

24 THE VIDEOGRAPHER: Off the record
25 at 10:05.

1 (Whereupon, a recess is taken.)

2 THE VIDEOGRAPHER: Okay. Back on
3 the record at 10:20. Go ahead.

4 BY MR. HANAUER:

5 Q. Mr. Zagone, before we went on the break,
6 we were talking about Exhibit 29 and I had asked
7 you to refer to the third page of the exhibit.

8 The last question I asked before we went
9 off the record is, did Ripple represent to the
10 British Treasury that Ripple developed XRP?

11 (Pause)

12 MR. WARD: Objection to form.

13 Q. And if it helps, Mr. Zagone, I'm only
14 asking you about the second paragraph of the
15 letter.

16 MR. HECKER: So to be clear, the
17 question is whether that -- that paragraph
18 includes a representation about that?

19 MR. HANAUER: Did Ripple
20 represent to the British Treasury that
21 Ripple developed XRP?

22 MR. HECKER: In that one
23 paragraph?

24 MR. HANAUER: Correct.

25 A. Just related to the one paragraph here,

1 this paragraph states: "Ripple protocol enables
2 payments in any fiat or virtual currency,
3 including the math-based virtual currency
4 developed by Ripple Labs, XRP."

5 Q. So Ripple represented to the British
6 Treasury that Ripple developed XRP?

7 MR. HECKER: Objection to form.

8 MR. WARD: Objection.

9 MR. CERESNEY: Objection to form.

10 A. The statement here is that "including
11 the math-based currency developed by Ripple Labs,
12 XRP." That's what it says.

13 (Whereupon, exhibit is presented
14 and marked SEC Zagone Exhibit RZ-1 for
15 identification.)

16 MR. HANAUER: I'm tendering the
17 witness a document marked as Exhibit RZ-1,
18 beginning with a Bates number ending in
19 5167.

20 BY MR. HANAUER:

21 Q. And before I ask you any questions about
22 the exhibit, was selling XRP part of Ripple's
23 business model?

24 A. The business that I understood is we
25 were selling payment solutions, xCurrent and

1 xRapid, to banks.

2 THE REPORTER: Repeat the last
3 part.

4 A. We were selling payment solutions,
5 xRapid and xCurrent, to banks.

6 Q. Was that the only part of Ripple's
7 business model?

8 MR. CERESNEY: Object to form.

9 A. The company sold XRP. We were public
10 about that.

11 Q. And how -- what do you mean, "The
12 company sold XRP"?

13 A. The company held XRP and sold it.

14 Q. So Exhibit RZ-1, that's an e-mail from
15 you to [REDACTED] forwarding an e-mail you
16 received from [REDACTED]?

17 A. I'm not sure how I received it. I'm not
18 on -- listed on the e-mail thread, but I am
19 forwarding it to [REDACTED]

20 Q. And you are also forwarding the
21 attachment to the e-mail?

22 A. Correct.

23 Q. And who is Mr. [REDACTED]

24 A. Mr. [REDACTED] was on the markets team.

25 Q. And do you see how Mr. [REDACTED]s e-mail

1 is going to someone at [REDACTED]?

2 A. Correct.

3 Q. And what was -- what information was
4 Ripple submitting to [REDACTED]?

5 MR. HECKER: Objection;

6 foundation.

7 A. I'd have to review the document to see.

8 Q. Okay. Could you take a quick look?

9 (Pause)

10 A. These are responses to the questions
11 from [REDACTED]

12 Q. And I guess why was Ripple interacting
13 with [REDACTED]?

14 MR. WARD: Objection to form.

15 A. I -- I don't know exactly.

16 Q. So in 2015 Ripple had significant XRP
17 holdings, is that right?

18 A. Ripple had XRP holdings in 2015.

19 Q. Did Ripple have the majority of the XRP
20 in existence in 2015?

21 MR. CERESNEY: Objection; form.

22 A. I don't know.

23 Q. And one of Ripple's goals was to
24 increase the use of XRP?

25 MR. HECKER: Counsel, are we

1 talking about this document or are we done
2 with this document?

3 MR. HANAUER: We're still on it.

4 MR. HECKER: Okay.

5 MR. CERESNEY: Objection to form.

6 A. The goal of the company was we were
7 building a payment network, so the adoption of our
8 payment solutions.

9 Q. And XRP was part of the way those
10 payment systems worked?

11 A. XRP was a component of one of the
12 products that we sold.

13 Q. And was it a goal of Ripple to increase
14 the use of XRP?

15 MR. CERESNEY: Objection.

16 MR. HECKER: Objection to form.

17 A. The -- the goal of Ripple was to -- to
18 build a payment network and get broader adoption
19 of our -- of our products, xCurrent, xRapid, the
20 two primary products when I was there.

21 Q. Did you understand that XRP could
22 appreciate in value as the use of XRP increased?

23 MR. CERESNEY: Objection; form.

24 A. XRP -- I did understand that.

25 Q. Did you agree with that?

1 MR. CERESNEY: Objection; form.

2 A. The price of XRP and all the digital
3 assets are -- seem to be just flowing with the
4 market, market sentiment.

5 Q. Did you agree that the price of XRP
6 would generally go up as the use of XRP increased?

7 MR. CERESNEY: Objection; form.

8 A. Depends on the market conditions. It's
9 kind of hard to say. There was periods of greater
10 adoption of all digital assets, but the prices
11 were coming down.

12 Q. What about long term?

13 MR. CERESNEY: Objection to form.

14 MR. WARD: Objection to form.

15 A. It's a big hypothetical. There's so
16 many variables in what's guiding price. Greater
17 adoption generally would -- would -- greater
18 adoption would be greater demand. Demand is a
19 factor in price.

20 Q. So can I ask you to look at the second
21 page of Exhibit 1? And do you see the last
22 paragraph before heading 6? And Ripple was
23 representing to [REDACTED] that XRP may
24 appreciate in value with increased use of the
25 Ripple protocol?

1 A. I see it says that.

2 Q. That's something that Ripple represented
3 to [REDACTED]?

4 MR. HECKER: Objection to form.

5 A. It says that they appreciate in value
6 with increased use of the protocol.

7 Q. And you agree with that statement?

8 A. I -- I didn't write this document.

9 Q. Do you agree with that statement?

10 A. I agree that it may -- it may
11 appreciate. It's a possibility with increased
12 use.

13 Q. Did Ripple make efforts to increase the
14 price of XRP?

15 MR. HECKER: Objection to form.

16 You can answer.

17 A. No.

18 Q. Did Ripple make efforts to increase the
19 use of XRP?

20 A. We made efforts to educate people in the
21 market on XRP, how it worked, its advantages. It
22 was -- it was -- to me it was, like, educational.

23 Q. Did Ripple make efforts to create more
24 ways in which XRP could be used by market
25 participants?

1 MR. HECKER: Objection to form.

2 A. XRP's an open-source protocol, so
3 there's -- anyone can develop on it. And we saw
4 that happening in that time frame. So there was
5 factors outside of the company creating new ways.
6 The company was focused on the payment network.

7 Q. When you say "the company," you mean
8 Ripple?

9 A. Ripple, yeah.

10 Q. And was Ripple focused on a payment
11 network that used XRP as part of that network?

12 A. Yeah.

13 Q. And was Ripple trying to promote the use
14 of a payment network that used XRP as part of that
15 network?

16 MR. CERESNEY: Objection to form.

17 MR. WARD: Objection.

18 A. We were promoting a payment -- our
19 products, the payment network. One of the
20 products used XRP as a liquidity tool.

21 Q. How did Ripple generate revenues while
22 you worked there?

23 A. When I was there, we sold contracts to
24 banks to use our payment products and we sold XRP.

25 Q. And how did Ripple's revenues from

1 selling software and professional services compare
2 to its revenues from selling XRP?

3 A. I -- I don't know.

4 Q. Do you know whether Ripple generated
5 more revenues from selling XRP than it did from
6 selling software products and other services?

7 A. I don't know definitively what the split
8 was. I -- I only served on the business
9 development team for -- it was around nine months.

10 Q. Did you have a general understanding?

11 A. No, I didn't focus on the financials.

12 Q. Did Ripple raise working capital by
13 selling XRP?

14 MR. WARD: Objection to form.

15 A. We sold XRP. We funded the company
16 through traditional equity. So we did -- when I
17 was there, we did a Series A and a Series B round.
18 Shortly after I left, we closed a C.

19 Q. And how much money did Ripple bring in
20 from those funding rounds?

21 A. I -- I can't recall.

22 Q. Did Ripple also raise working capital by
23 selling XRP?

24 MR. HECKER: Objection to form.

25 MR. CERESNEY: Objection to form.

1 A. We sold XRP.

2 Q. Can I ask you to look at the page of
3 Exhibit 1 ending with 5178? And do you see the
4 paragraph under the heading 2 where it says "XRP
5 II, LLC"?

6 A. I see that.

7 Q. And what was XRP II, LLC?

8 A. It was a subsidiary of Ripple Labs that
9 sold XRP to institutional investors and market
10 makers.

11 Q. What do you mean by "institutional
12 investors"?

13 A. Institutions, not like retail, like you
14 or me, individuals, but institutional funds, the
15 professional business, or market makers.

16 Q. And for the institutional investors
17 who -- they thought Ripple -- they thought XRP
18 would go up in value when they purchased XRP?

19 A. I -- I don't know what -- what they
20 thought.

21 Q. Well, what was your understanding of why
22 institutional investors were buying XRP from
23 Ripple?

24 A. I think -- you have to ask them what --
25 what they were doing. There was a lot of market

1 makers who were making markets on an XRP ledger.
2 There were -- and institutional investors. So
3 either wanting exposure to crypto -- usually in
4 that time wanting exposure to crypto pretty
5 generally.

6 Q. Meaning the institutional investors
7 wanted XRP as part of their investment portfolio?

8 MR. HECKER: Objection to form.

9 A. I mean, you would have to ask the
10 institutional investors why they were buying it.

11 Q. Did you have an understanding of why the
12 institutional investors were buying XRP?

13 A. I was not on the markets team. I didn't
14 have an understanding.

15 Q. What was your understanding of why
16 market makers were purchasing XRP from Ripple?

17 A. To -- to make markets on the XRP ledger
18 and other -- other assets. So buying and selling
19 for a margin.

20 Q. And who was trading on those markets?

21 A. They were open markets. Anyone could
22 access and trade.

23 Q. Do you have an understanding of why
24 people were trading XRP on those markets?

25 MR. HECKER: Objection; form.

1 A. I don't know -- not on XRP specifically.
2 Market makers generally buy and sell for margin,
3 kind of regardless of price, but they buy and sell
4 a lot. They make a small margin on that.

5 Q. Did Ripple pay market makers to make a
6 market in XRP?

7 A. I don't know.

8 Q. When Ripple sold XRP, did it place
9 restrictions on who the purchasers could sell XRP
10 to?

11 A. I don't know.

12 Q. Did Ripple know what the persons and
13 entities who purchased XRP would do with it after
14 they bought it from Ripple?

15 A. I don't know.

16 Q. And referring you back to that paragraph
17 on page 178 of Exhibit 1, do you see how it says
18 "All sales of XRP conducted by XRP II are for the
19 benefit of Ripple Labs, its ultimate parent
20 company, and represents one method by which Ripple
21 Labs raises working capital"?

22 A. I see that.

23 Q. When did Ripple stop raising working
24 capital by selling XRP?

25 MR. HECKER: Objection to form.

1 MR. WARD: Objection to form.

2 A. I don't know. I wasn't on the marketing
3 or finance team -- the markets or finance team.

4 Q. What was [REDACTED]?

5 A. I don't know. I can't recall.

6 (Whereupon, exhibit is presented
7 and marked SEC Zagone Exhibit RZ-2 for
8 identification.)

9 MR. HANAUER: I'm tendering the
10 witness a document marked as Exhibit RZ-2
11 with a Bates number ending in 1111.

12 BY MR. HANAUER:

13 Q. Do you see, is Exhibit RZ-2 an e-mail
14 from [REDACTED] to [REDACTED] copying you and
15 others, dated September 2nd, 2015?

16 A. I see that.

17 Q. And why don't you take a look at the
18 e-mail and see if that refreshes your recollection
19 about [REDACTED]?

20 (Pause)

21 A. Okay.

22 Q. So does looking at Exhibit RZ-2 refresh
23 your recollection as to what [REDACTED] was?

24 A. It does not.

25 Q. Do you know what the XRP fund was?

1 A. No.

2 Q. Do you know if Ripple was selling XRP to
3 [REDACTED]?

4 A. I don't know.

5 Q. So besides institutional investors and
6 market makers, in 2016, who else was Ripple
7 selling XRP to?

8 A. It was my understanding we were selling
9 to institutional investors and market makers. I
10 don't have awareness outside of that.

11 Q. Any other financial institutions?

12 A. Not that we were selling to that I was
13 aware of.

14 (Whereupon, exhibit is presented
15 and marked SEC Zagone Exhibit RZ-3 for
16 identification.)

17 MR. HANAUER: I tendered the
18 witness a document marked as Exhibit RZ-3,
19 starting with the Bates number ending in
20 1249.

21 BY MR. HANAUER:

22 Q. And is Exhibit RZ-3 an e-mail [REDACTED]
23 [REDACTED] sent to various folks at [REDACTED] copying you and
24 others, on March 21st, 2016?

25 A. Correct.

1 Q. And there's an attachment to Mr. [REDACTED]

2 e-mail as part of Exhibit RZ-3?

3 A. Yes. I see the attachment.

4 Q. Who is [REDACTED]

5 A. [REDACTED] was the controller on the
6 finance team.

7 Q. For Ripple?

8 A. For Ripple.

9 Q. And why was Ripple interacting with [REDACTED]

10 [REDACTED]

11 MR. WARD: Objection to form.

12 A. I don't know specifically. I assume it
13 was part of a BD discussion.

14 Q. And I want to refer you to the first
15 page of the attachment in the Exhibit RZ-3. Do
16 you see under the heading "Request," it says "To
17 support Ripple's growth in the near term, the
18 company is seeking a bank partner to provide"
19 business banking -- "a business banking account
20 for a wholly owned subsidiary XRP II, LLC"?

21 A. I see that.

22 Q. So was XRP II looking for a bank?

23 MR. HECKER: Objection to form.

24 A. This shows that we're looking for a bank
25 partner, yes. I recall that that was part of our

1 application to New York DSS for a virtual currency
2 license.

3 Q. And then do you see on the bottom, the
4 last paragraph of the page ending in 250, it says
5 "XRP II, LLC would use this bank account to book
6 revenue and pay operating expenses from its
7 primary business activities: Selling digital
8 assets to financial institutions and institutional
9 investors"?

10 A. I see that.

11 Q. And is it accurate that XRP II's primary
12 business activities in 2016 were selling XRP to
13 financial institutions and institutional
14 investors?

15 MR. HECKER: Objection to form.

16 A. To the best of my understanding, yes.

17 Q. What was your understanding of the
18 financial institutions being described in this
19 memorandum?

20 A. So we were working -- financial
21 institution being a bank, a bank that we were
22 working with that would be using that product.

23 Q. And in 2016, why were banks -- what were
24 they doing with XRPs?

25 MR. CERESNEY: Objection to form.

1 A. In 20 -- in 2016, we were undergoing --
2 we had a series of proof of concepts and pilots
3 going on with a number of banks that we were
4 working with to -- this is in the company -- the
5 company, Ripple Labs, at the time, we were
6 experimenting with what the right -- well, I guess
7 the optimal product design would be for
8 connectivity and liquidity for payments. So we
9 had several pilots and proof of concepts going on
10 and it included XRP.

11 Q. So if a bank was using XRP in 2016, it
12 would have been for a pilot or use of concept?

13 A. In the 2014 to maybe early 2016 range,
14 somewhere in there, yeah. My -- my memory of the
15 timeline is hazy at this point, but it had a
16 number of proof of concepts and pilots going on.

17 Q. Were -- were banks using -- were banks
18 purchasing XRP from Ripple for purposes other than
19 pilot testing or use of concepts?

20 A. I don't know.

21 Q. In 2016 was XRP used by consumers?

22 A. Yes.

23 Q. Which consumers were using XRP in 2016?

24 A. XRP was -- an XRP ledger open source,
25 you could acquire it from exchanges. You could --

1 any consumer could go in and buy XRP or bitcoin,
2 either, on an exchange.

3 Q. What uses for consumers did XRP have in
4 2016?

5 A. This is in the early day of crypto.
6 There were people using it as -- the primary use
7 case for crypto at the time was using it as a
8 currency, so as a replacement for the U.S. dollar.
9 So people would be buying coffee or goods or
10 services with crypto. So that would be a consumer
11 use case.

12 Q. And I want to refer you to the last page
13 of Exhibit 1. And do you see how the first
14 paragraph on the page ending in 1252 says "XRP as
15 a digital asset is not used by consumers and is
16 not a replacement for government issued money"?

17 A. I see that.

18 Q. Ripple was representing to XRP -- or
19 Ripple was representing to [REDACTED] that XRP is not
20 used -- or was not used by consumers in 2016?

21 A. That is meant -- what I -- what I
22 believe that's meant to say is that Ripple's use
23 of XRP in our products is not a direct-to-consumer
24 tool. So it was meant really to distinguish
25 between X -- Ripple's use of XRP as its liquidity

1 bridge from what was happening in the majority of
2 the crypto market at this time where exchanges
3 sold crypto to replace the U.S. dollar.

4 So this was -- this was speaking to how
5 Ripple was using XRP. We're not selling it to
6 consumers. We're not using it to replace
7 government-issued money but rather to connect it
8 more efficiently.

9 Q. How did the amount of XRP that Ripple
10 sold to institutional investors compare to the
11 amount of XRP Ripple sold for use in Ripple's
12 products?

13 MR. CERESNEY: Objection to form.

14 MR. HECKER: Objection to form.

15 A. I don't know.

16 (Whereupon, exhibit is presented
17 and marked SEC Zagone Exhibit RZ-4 for
18 identification.)

19 MR. HANAUER: I'm tendering the
20 witness a document that's been marked as
21 Exhibit RZ-4, which begins with a Bates
22 number ending in 9845.

23 MR. HECKER: Mr. Zagone, when
24 you're reviewing it, you're kind of
25 humming to yourself. We heard it.

1 BY MR. HANAUER:

2 Q. And is Exhibit RZ-4 an e-mail and
3 attachment that you sent to [REDACTED] on
4 January 6, 2017?

5 A. That's correct.

6 Q. And do you see how your -- the first
7 line of the exhibit says "To assist [REDACTED] in their
8 application, I provided them with the attached
9 paper of info that had to provide for the
10 BitLicense"?

11 A. I see that.

12 Q. What was [REDACTED]

13 A. [REDACTED] was a Japanese company that we were
14 partnering with. I believe we were -- at this
15 point, I can't recall if we were partnering with
16 them or -- yes, we were partnering with them,
17 [REDACTED] Ripple ledger.

18 Q. And what is the BitLicense you reference
19 in Exhibit RZ-4?

20 A. The BitLicense was the New York
21 Department of Financial Services' virtual currency
22 license.

23 Q. And why were you e-mailing Mr. [REDACTED]
24 or why were you e-mailing [REDACTED] the paper that you
25 provided in connection with the BitLicense?

1 (Pause)

2 A. It says here, in Japan, there was a
3 draft version of the government ordinance for
4 cryptocurrencies to be licensed -- for crypto
5 exchanges to be licensed. I believe they had to
6 provide background on the assets that they were
7 trading, one of which was XRP. Since we were a
8 partner with [REDACTED] we provided them content on XRP.

9 Q. And can I refer you to the page in
10 Exhibit 4 ending in 9852?

11 A. I see it.

12 Q. And did -- did you write this paper
13 titled "XRP Overview for [REDACTED]"?

14 A. I can't recall if I wrote it myself or
15 pieced it together from other documents we had at
16 Ripple.

17 Q. Was the information that Ripple was
18 providing to [REDACTED] in this paper truthful and
19 accurate?

20 A. I -- I assume so, yeah.

21 Q. Can I refer you to the -- the second
22 page of the paper? And that's the one with the
23 Bates number ending in 853.

24 A. Uh-huh.

25 Q. And do you see in the last paragraph on

1 that page, it says "XRP II, LLC sells or transfers
2 XRP to financial institutions and accredited
3 investors who bring payment volume and/or FX
4 liquidity to Ripple"?

5 A. I see that.

6 Q. And in 2017, Ripple was selling XRP to
7 financial institutions and accredited investors?

8 A. That was my understanding.

9 Q. What did you understand the term
10 "accredited investors" to mean?

11 A. This I got from the -- from our markets
12 and legal team. I was not on the markets team.

13 Q. Do you have an understanding of what the
14 term "accredited investor" means?

15 A. An understanding that it's a -- it's a
16 defined class of investors who have a certain net
17 worth or income.

18 Q. And who were the accredited investors
19 Ripple was selling XRP to in 2017?

20 A. I don't know.

21 Q. And when the paper talks about selling
22 XRP to financial institutions and accredited
23 investors who bring payment volume and/or FX
24 liquidity to Ripple, what does that mean when
25 speaking about the pay -- payment volume and/or FX

1 liquidity?

2 MR. HECKER: Objection to form.

3 A. I'm not certain. I -- I got this
4 from -- this is -- that's not something that looks
5 like I -- that I recall writing.

6 Q. Can I refer you to the last page of
7 Exhibit 4, please?

8 A. Sure.

9 Q. And under the heading "Supply of XRP,"
10 do you see it says "While buyers and sellers
11 determine the market price of XRP, the supply of
12 XRP is an important variable to consider when
13 valuing the asset"?

14 A. I see that.

15 Q. How did the supply of XRP affect its
16 price?

17 A. Generally supply and demand drive price.
18 So if there's an increase or a decrease in supply
19 relative to an increase or decrease in demand, you
20 would see a change in price.

21 Q. So if the supply goes up, all other
22 things being equal, what happens to the price?

23 MR. WARD: Objection to form.

24 A. If supply goes up and demand is -- is
25 the same, price would go down.

1 Q. And what if supply went down but demand
2 stayed the same?

3 MR. WARD: Object to form.

4 A. If supply went down, but demand stayed
5 the same, price would go up.

6 Q. What if supply stayed the same and
7 demand went up?

8 MR. WARD: Object to form.

9 A. Price would go up.

10 Q. What if supply stayed the same and
11 demand went down?

12 MR. WARD: Object to form.

13 A. Price would go down.

14 Q. Then do you see the second paragraph
15 where it says "As of December 26, 2016, Ripple
16 held approximately 63 billion of the 100 billion
17 XRP"?

18 A. I see that.

19 Q. What -- what did that mean?

20 A. There were 100 billion XRP in existence.
21 Ripple held 63 billion of them.

22 Q. And then do you see the next sentence
23 says "Ripple's distribution strategy, including
24 the timing, volume and pace of distribution, will
25 impact the supply and ultimately the value of

1 XRP"?

2 A. I see that.

3 Q. What did that mean?

4 A. That as the company distributes or sells
5 XRP, either they sell it or give it away, that
6 will impact the supply -- it will increase the
7 supply and could impact the price, depending on
8 what happens to demand.

9 Q. So how Ripple went about distributing
10 its XRP holdings could impact the price of XRP?

11 MR. CERESNEY: Objection to form.

12 A. Hypothetically it could, depending on
13 what happens with demand and general market
14 conditions.

15 Q. And then do you see the next paragraph
16 says "Ripple aims to distribute XRP in a way that
17 supports a stable or strengthening value of XRP"?

18 A. I see that.

19 Q. Was that an aim of Ripple?

20 A. It says Ripple -- it says "Ripple's aim
21 is to distribute XRP in a way that supports a
22 stable or strengthening value."

23 Q. So did Ripple aim to distribute XRP in a
24 way that would cause XRP's price to stay the same
25 or go up?

1 MR. CERESNEY: Objection to form.

2 A. That's what I understand that statement
3 says.

4 Q. And then the last sentence said -- says
5 "Ripple expects to see an increase in demand for
6 XRP that more than offsets the additional supply
7 that is injected into the market via sales of the
8 asset."

9 What does that mean?

10 A. Seems to say our expectation for demand
11 would increase more than the additional supply.

12 Q. So even though the supply of XRP was
13 going up, because the demand for XRP was going up
14 also, the price of XRP would not fall?

15 MR. CERESNEY: Objection --

16 MR. HECKER: Objection to form.

17 A. The statement's saying that we were --
18 we were looking to be responsible with our own
19 transactions for -- to ensure a stable or
20 strengthening value of XRP.

21 Q. And by "stable or strengthening value,"
22 you meant the price of XRP not going down?

23 MR. HECKER: Objection to form.

24 A. That's what we were -- I'm sorry.
25 That's what we were looking for, a stable or

1 strengthening value, so not declining. Not
2 declining from our activity.

3 (Whereupon, exhibit is presented
4 and marked SEC Zagone Exhibit RZ-12 for
5 identification.)

6 MR. HANAUER: And I just tendered
7 the witness a document labeled as Exhibit
8 RZ-12, which begins with a Bates number
9 ending in 6910.

10 BY MR. HANAUER:

11 Q. Is Exhibit RZ-12 an e-mail and
12 attachment that you sent to various people at MAS
13 on June 16th, 2017?

14 A. That's correct.

15 Q. What is MAS?

16 A. That's the Monetary Authority in
17 Singapore, Central Bank of Singapore.

18 Q. And there's a paper attached to the
19 e-mail you sent to the monet -- Monetary Authority
20 of Singapore titled "XRP Overview - Long-term
21 Vision and Short-term Tactics"?

22 A. Correct.

23 Q. Did you draft that paper?

24 A. I can't recall if I drafted it or --
25 from scratch or if I -- it was pulled together

1 from existing materials.

2 Q. You had a role in --

3 A. I had a role in producing it.

4 Q. And why were you providing this paper to
5 the Monetary Authority of Singapore?

6 A. So MAS was and still is one of the
7 leading players, central banks, in looking at how
8 digital currency can be used within payments,
9 international -- particularly international
10 payments. So we were engaging with them on a
11 series of experiments that they were doing.

12 Q. And the information you provided to the
13 Monetary Authority of Singapore was truthful and
14 accurate?

15 A. Correct.

16 Q. And I'd like to refer you to page -- the
17 page ending in 942 labeled "Appendix 1."

18 Referring you to the second paragraph,
19 it says "XRP II, LLC. This subsidiary sells XRP
20 to a limited" custer bay -- "customer base,
21 including financial institutions and accredited
22 investors."

23 A. I see that.

24 Q. Ripple was still selling XRP to
25 accredited investors in June of 2017?

1 A. XRP II was -- that's the entity that
2 would sell to accredited investors and financial
3 institutions. To the degree that it was or it
4 wasn't in that time frame, I don't know.

5 Q. Was XRP selling -- was XRP II, LLC
6 selling XRP to accredited investors in June 2017?

7 MR. WARD: Objection.

8 A. If we -- that was the entity that -- XRP
9 II, LLC, is the entity that would sell XRP II.
10 It's sold to financial institutions and accredited
11 investors. I don't know if transactions were
12 happening in that time frame. If they were, they
13 would have happened through XRP II.

14 Q. And just to be clear, your -- your paper
15 to the Monetary Authority of Singapore is dated
16 June 2017?

17 A. Correct.

18 Q. And I want to refer you to the -- the
19 next page ending in 943 where -- under the heading
20 "Supply of XRP."

21 A. I see it.

22 Q. And do you see the second paragraph
23 talks about "a cryptographically secured escrow
24 that manages the timing and release of" XRP?

25 A. I see that.

1 Q. Could you describe what that escrow
2 program was?

3 A. The escrow program was a initiative to
4 take a significant portion of the company's XRP
5 and place it outside of control of the company,
6 like locked in an escrow. On a certain period, a
7 certain amount of XRP would be released to the
8 company. I can't recall what that period or what
9 the amount was.

10 The -- the effort came about, we were
11 seeing bad actors in the crypto space that were --
12 that held a lot of crypto and were dumping it at
13 will and walking away.

14 We wanted to give assurance to the
15 market that we were going to be a responsible
16 player and would not -- were not going to do that
17 with our own holdings.

18 Q. So Ripple wanted to convey to the market
19 that Ripple would not flood the market with its
20 own XRP holdings?

21 A. Correct.

22 MR. HANAUER: Could we go off the
23 record, please?

24 THE VIDEOGRAPHER: Yep. Going
25 off the record at 11:10.

1 (Whereupon, a discussion is held
2 off the record.)

3 THE VIDEOGRAPHER: Okay. Back --
4 back on the record at 11:12.

5 Go ahead.

6 BY MR. HANAUER:

7 Q. So the reason Ripple set up the escrow
8 program was to address concerns for market
9 participants that Ripple could dump large amounts
10 of its XRP holdings into the market?

11 MR. CERESNEY: Objection.

12 MR. HECKER: Objection to form.

13 A. The -- there were bad actors in the
14 crypto space that were dumping their -- their
15 holdings and crashing prices of other cryptos. So
16 we saw that as the -- the market became concerned
17 across all the cryptocurrencies that this could
18 happen.

19 Ripple proactively set up the escrow to
20 give assurance to the market that we weren't going
21 to do that. We were going to be a responsible
22 player. We're locking this aside. We're not
23 going to dump our holdings. So it was a proactive
24 step we took.

25 Q. And if Ripple had dumped large amounts

1 of XRP into the market all at once, would that
2 have negatively affected XRP's price?

3 A. Yeah, there would be --

4 MR. CERESNEY: Objection; form.

5 A. That would be a -- a flood of supply
6 into the market. Depending on what demand was at
7 the time, if demand was stable or unchanged, price
8 would go down.

9 Q. How did the escrow program affect XRP's
10 price?

11 MR. CERESNEY: Objection to form.

12 A. When we announced the escrow program, it
13 was a reduction in supply and the price went up.
14 The market had more certainty around how we were
15 going to use or dispose of the XRP.

16 Q. In June 2017, did Ripple continue to
17 distribute XRP in a way that would support or
18 increase XRP's price?

19 MR. HECKER: Objection to form.

20 A. The -- the guiding factor for Ripple was
21 not to have an impact on the price. We -- we saw
22 that -- I saw that in the quarterly market reports
23 showing that our trading and -- not our trading,
24 our selling activity was only a small portion of
25 the trading that was happening.

1 Q. In June 2017, did Ripple still aim to
2 distribute XRP in a way that supported a stable or
3 strengthening value of XRP?

4 MR. CERESNEY: Objection; form.

5 A. I -- I can't speak to the -- what the
6 marketing team -- the market -- the markets team
7 was doing during that time.

8 Q. What were Ripple's -- you can put that
9 exhibit down.

10 What were Ripple's OTC sales?

11 A. Over-the-counter sales. I -- I don't
12 know much about them.

13 Q. How did the over-the-counter sales
14 differ from XRP II, LLC's sales of XRP?

15 A. I don't know.

16 MR. HANAUER: Exhibit 14.

17 (Whereupon, exhibit is presented
18 and marked SEC Zagone Exhibit RZ-14 for
19 identification.)

20 MR. HANAUER: I'm tendering the
21 witness a document that's been marked as
22 Exhibit RZ-14, which begins in a Bates
23 number ending in 5510.

24 BY MR. HANAUER:

25 Q. Is Exhibit RZ-14 an e-mail exchange

1 between you and Miguel Vias dated October 9th,
2 2017?

3 A. I see that, yes.

4 Q. And do you see the third e-mail in the
5 chain, you write to Mr. Vias, "Question: We seem
6 to be seeing a lot of OTC demand and sales. By
7 selling OTC, that demand doesn't get captured on
8 exchanges or reflected in market prices. Would we
9 be better off shifting some demand to exchanges
10 for XRP purchases?"

11 What are you writing about there?

12 MR. WARD: Object to form.

13 A. I'm not certain. The rest of the e-mail
14 doesn't seem to be about OTC. It doesn't seem to
15 be about OTC sales. I'm asking if we -- if the
16 company should shift from selling OTC to
17 exchanges. I'm asking mainly out of curiosity
18 for -- and I'm asking Miguel Vias, head -- he's
19 the lead for the markets team, about what the
20 impact of OTC versus exchange selling is as that's
21 new for me.

22 Q. And -- and I guess, what was the
23 significance of selling XRP over the counter as
24 opposed to on an exchange?

25 MR. HECKER: Objection to form.

1 A. I -- from the question here at the time,
2 I don't seem to understand what the difference or
3 what the impact would be from OTC versus exchange
4 selling. So I'm trying to ask Miguel to clarify
5 that.

6 Q. And then Mr. Vias responds "This wasn't
7 a concern before, but coming to a head quickly, I
8 think we will put a cap on how much we sell OTC."

9 A. I see that.

10 Q. Why would capping OTC sales be
11 beneficial to Ripple?

12 MR. CERESNEY: Objection; form.

13 A. I don't know. You'd have to ask Miguel
14 for details on that.

15 Q. And then do you see in the bottom e-mail
16 from Mr. Vias and the subject's "XRP Market
17 Updates"?

18 A. Uh-huh. I see that.

19 Q. Mr. Vias writes "XRP has been on quite a
20 roll over the last week," and then he talks about
21 the -- writes about the price increase.

22 Do you see that?

23 A. I see that.

24 Q. Was that -- was it a good thing for
25 Ripple when the price of XRP increased?

1 MR. CERESNEY: Objection to form.

2 A. If the price of XRP increased, the
3 holdings -- Ripple's holdings of XRP was more
4 valuable.

5 Q. And that was good for Ripple?

6 A. Yes.

7 Q. Did Ripple ever make public
8 announcements about the rising price of XRP?

9 MR. HECKER: Objection to form.

10 A. I can't recall.

11 (Whereupon, exhibit is presented
12 and marked SEC Zagone Exhibit RZ-33 for
13 identification.)

14 MR. HANAUER: And I just tendered
15 the witness a document labeled RZ-33
16 beginning in a Bates number ending in
17 6858.

18 BY MR. HANAUER:

19 Q. And is Exhibit RZ-33 an e-mail from
20 insights@ripple.com to you dated December 20th,
21 2017?

22 A. That's correct.

23 Q. And what is this Ripple -- or the Ripple
24 Insights or [REDACTED]@ripple.com?

25 A. Ripple Insights, I believe it was a

1 newsletter that we -- that the company would send
2 out to people that are subscribed to it.

3 Q. And did that newsletter go to only
4 Ripple internally or to members of the public,
5 also?

6 A. I can't recall. We had an internal
7 version that shared internal news, and I believe
8 there was an external subscription newsletter you
9 could -- you could subscribe to. I don't recall
10 if this one was internal or external.

11 Q. And do you see on the third page of
12 Exhibit RZ-33, the e-mail talks about Ripple's
13 price increasing 89 percent in a single day?

14 A. I see that, yes.

15 Q. Did Ripple convey price increases of XRP
16 to the public?

17 A. I can't tell if this was the public
18 newsletter or not. We had an internal one. In
19 this e-mail, we seem to be capturing a news
20 article.

21 Q. Do you see how the very last portion of
22 Exhibit RZ-33 provides Ripple's mailing address?

23 A. I see that.

24 Q. And does that give you any indication of
25 whether the Ripple Insights' e-mail went only to

1 Ripple internal employees?

2 MR. WARD: Object to the form.

3 A. You would have to ask the marketing team
4 what -- what this specific one was. I just
5 received it. I received a daily -- a daily e-mail
6 on recent news and this one as well.

7 Q. To the extent that Ripple was promoting
8 XRP price increases to the public, did you have
9 any concerns about that?

10 MR. CERESNEY: Objection.

11 MR. HECKER: Objection to form.

12 MR. WARD: Objection.

13 A. Well, in this newsletter here, we're --
14 we're just quoting a news report it looks like.
15 CoinMarketCap.

16 Q. To the -- to the extent that Ripple was
17 publicly announcing price increases of XRP, did
18 you have any concerns about that?

19 MR. CERESNEY: Objection; form.

20 A. I did not, no.

21 Q. When you left Ripple, was On-Demand
22 Liquidity, or ODL, Ripple's primary product that
23 it sold to customers?

24 A. When I left Ripple, we had two products,
25 xCurrent and xRapid. We were in the midst of

1 evolving the branding of those products. The
2 majority of the time I was there, it was xCurrent
3 and xRapid.

4 Q. And did xCurrent use XRP as part of its
5 product?

6 A. We did not.

7 Q. And xRapid did use XRP to make that
8 product work?

9 A. Correct.

10 Q. Was xRapid the first product Ripple sold
11 for commercial use that used XRP?

12 A. We had variants of xRapid leading up to
13 the product that we were selling when I left that
14 also used XRP. That was the primary product
15 that -- that leveraged XRP technology.

16 Q. Was xRapid the first Ripple product that
17 used XRP that Ripple sold to customers as opposed
18 to did pilot testing or proof of concept testing?

19 MR. CERESNEY: Objection; form.

20 A. That product is what we sold that used
21 XRP. I can't recall if we had another name for it
22 before or after, but xRapid was the branding that
23 we were using when I was there.

24 Q. And I guess was -- was xRapid the first
25 Ripple product in widespread commercial use that

1 used XRP?

2 MR. CERESNEY: Objection; form.

3 A. That was the primary product that used
4 XRP when I -- when I was there that we were
5 focused on banks.

6 Q. And I guess was there a -- a product
7 before xRapid that was -- Ripple sold for
8 commercial use that used XRP?

9 MR. WARD: Objection to form.

10 A. Our product journey started with a
11 single product that we ran pilot testing, proof of
12 concepts. As we evolved -- that single product
13 covered connectivity and liquidity. As we evolved
14 the solution, we split those into two separate
15 products so we could specialize the tech used in
16 each: One connectivity, one liquidity.

17 So there were times when we were selling
18 one solution. In the early days, we called it
19 Ripple Connect. It evolved into two separate
20 products. XRP was a part of the early platform
21 when it was just one single product as well.

22 Q. When did the first Ripple customers
23 begin using xRapid?

24 MR. WARD: Objection to form.

25 A. I don't a -- I'm sorry. I don't recall

1 a specific date when it was launched.

2 Q. Was xRapid the first Ripple product that
3 used XRP that made it beyond the pilot testing or
4 proof of concept stage?

5 MR. HECKER: Objection to form.

6 A. We -- we might have had other customers
7 in the early day that were full commercial
8 customers using that initial platform we used
9 beyond just a pilot. I can't recall specifics.

10 MR. CERESNEY: Can I just make
11 sure that we're talking here just about
12 the payments products? Because there were
13 other products that were using XRP, so I
14 just want to make sure that the record is
15 clear on this.

16 MR. HANAUER: I was asking about
17 products that used XRP.

18 MR. CERESNEY: You mean all
19 products?

20 MR. HANAUER: Correct.

21 MR. CERESNEY: Because I think he
22 was focused on the xRapid-type products.

23 A. So my work at Ripple was on the payment
24 products. So xRapid, xCurrent, and the products
25 that led up to those -- those two. I -- I didn't

1 have engagement with other products using X --

2 XRP.

3 Q. Are you aware of Ripple selling products
4 that used XRP prior to xRapid?

5 A. Ripple had other projects going on that
6 used XRP.

7 Q. All right. But did Ripple sell products
8 for commercial use using XRP before it began
9 selling xRapid?

10 A. Not that I was involved in. That could
11 have been for other parts of the BD team
12 potentially.

13 Q. Can you name another product other than
14 XRP that Ripple sold that used XRP as part of the
15 product?

16 A. There --

17 MR. WARD: Objection.

18 A. -- were other products on ongoing. One
19 was TradeSafe, a trade finance platform that used
20 XRP. It was built on the XRP ledger with the
21 Development Bank of Singapore and a few others.

22 So there were -- there was definitely
23 other experimentation happening on XRP ledger
24 using XRP. I can't recall the commercial
25 arrangements to say if we sold that or not.

1 Q. Are you aware of any Ripple products
2 that used XRP other than xRapid that entered
3 widespread commercial use?

4 MR. HECKER: Objection to form.

5 A. My focus was on xRapid and xCurrent. So
6 there was other stuff happening in that -- in the
7 company that I wasn't involved in, other products.
8 But my focus was specific to the payments
9 products.

10 Q. Was xRapid commercially viable for
11 Ripple?

12 MR. HECKER: Objection to form.

13 A. I believe so, yes.

14 Q. Did Ripple bring in more revenues from
15 xRapid than it spent developing xRapid?

16 A. I don't know that --

17 MR. WARD: Objection.

18 A. I don't know the commercial terms of the
19 xRapid deals.

20 Q. Was a liquid market in XRP needed for
21 Ripple's products that used XRP to work?

22 A. Yes. You would need a liquid market for
23 xRapid to work.

24 Q. Why?

25 A. You would need enough trading to be able

1 to process the payment from, say, U.S. dollar to
2 XRP and on the receiving end, say it's a payment
3 to Mexico, from XRP to Mexican peso.

4 Q. When you worked at Ripple, did Ripple
5 attempt to create a liquid trading market for XRP?

6 MR. CERESNEY: Objection; form.

7 A. When I was at Ripple, we had a markets
8 team that worked with the broader market to ensure
9 the liquidity -- necessary liquidity was available
10 in the countries that were deploying xRapid.

11 Q. And what efforts, specific efforts, did
12 Ripple make to create liquid trading markets in
13 XRP?

14 MR. HECKER: Objection to form.

15 A. I'm not certain. That wasn't my role.

16 Q. When did enough XRP liquidity first
17 exist for xRapid to be commercially viable?

18 MR. HECKER: Objection to form.

19 A. I'm not certain. You'd have to ask the
20 markets team.

21 Q. As of January 2017, was there enough
22 liquidity for XRP to -- to be -- to be used for
23 commercially viable cross-border payments?

24 MR. HECKER: Objection to form.

25 A. Depends on the corridors that we're

1 discussing.

2 Q. U.S. Mexico?

3 A. I'm not certain on what the liquidity
4 was for a Mexican peso to XRP in 2017.

5 Q. What corridors was there sufficient
6 liquidity in for XRP to be used for commercially
7 viable cross-border payments in 2017?

8 MR. WARD: Objection.

9 A. I'm not certain. My role was the
10 regulatory approvals for the banks.

11 MR. CERESNEY: Why don't we do
12 one more document and then take a break no
13 matter whether the judge calls or not?
14 Because we've been going for awhile.

15 MR. HANAUER: Sure.

16 (Whereupon, exhibit is presented
17 and marked SEC Zagone Exhibit RZ-7 for
18 identification.)

19 MR. HANAUER: And I just tendered
20 the witness a document marked as Exhibit
21 RZ-7 beginning with a Bates number ending
22 in 2646.

23 BY MR. HANAUER:

24 Q. And is Exhibit RZ-7, is that a copy of a
25 Slack chain that you were on and a file uploaded

1 to that Slack chain?

2 A. That's correct.

3 Q. And the document beginning on the second
4 page of Exhibit RZ-7, is that a paper you wrote
5 called "XRP Overview for Regulators: Long-term
6 Vision and Short-term Tactics"?

7 A. That's correct.

8 Q. And do you see how on the first page of
9 Exhibit RZ-7, the first entry in the Slack chain
10 you reference sending a paper to the Bank of
11 Mexico?

12 A. Yes.

13 Q. And had you, in fact, sent the XRP
14 overview for regulators' paper to the Bank of
15 Mexico in January of 2017?

16 A. Yes, I did.

17 Q. Why?

18 A. I can't recall specifically on this
19 time. We had engagement with Mexico over a number
20 of years. Mexico came up through a Bank of
21 International Settlements meeting that was hosted
22 in Mexico City by the Bank of Mexico and I was
23 presenting on the future of payment infrastructure
24 with blockchain in digital assets.

25 Q. And I'm sorry if I didn't hear you.

1 Who in Mexico were you providing this
2 paper to?

3 A. The central bank.

4 Q. The central bank?

5 A. Yeah.

6 Q. Did you provide this document to
7 regulators in other countries?

8 A. I believe so. It was our general
9 document on overview of XRP and xRapid.

10 Q. And the information you provided in the
11 XRP overview for regulators paper was truthful and
12 accurate?

13 A. It was.

14 Q. So I want to refer you to the page
15 ending -- the third page of the paper, the one
16 ending with Bates number 649.

17 A. I see it.

18 Q. You see it says "Ripple is working to
19 create the necessary conditions needed for digital
20 assets to be used for liquidity. We are pursuing
21 three short-term tactics to develop this liquidity
22 solution."

23 A. I see that.

24 Q. And the first one is "validating the use
25 case"?

1 A. Yes.

2 Q. Can you describe that, please?

3 A. Validating the use case, we ran a trial
4 in the early days of the company with 12 banks and
5 another experimentation or consulting firm called
6 [REDACTED] And that trial was used -- trialing using XRP
7 to test the liquidity savings for international
8 payments.

9 Q. Then what about "Driving regulatory
10 certainty"? How was that a tactic to develop
11 liquidity?

12 A. Yeah. First we proved there was a valid
13 use case, which -- which we did. The second step
14 for broader adoption was creating regulatory
15 certainty, that banks could adopt this type of --
16 of solution. And so this was primarily my work
17 here, working with our banking clients and their
18 regulators, sharing we're meeting vendor due
19 diligence requirements. We're okay to be
20 leveraged as a new vendor.

21 And, also, here, the -- securing a
22 virtual currency license for XRP II.

23 Q. And then tactic three, "Creating market
24 liquidity"?

25 A. Market liquidity was needed to be able

1 to process payments through XRP. And here are
2 some bullet points on what the markets team was
3 doing to build that market liquidity, either build
4 it or -- or establish it through an ecosystem.

5 Q. And then do you see on the next page,
6 there's a heading "Tactic 3: Creating Market
7 Liquidity"?

8 A. Yes, I see that.

9 Q. And this section of the paper describes
10 Ripple -- Ripple's efforts to create a liquid
11 trading market in XRP?

12 A. Yeah. This section here talks about the
13 support we were doing for -- to drive liquidity in
14 the market.

15 Q. And as one of the ways to drive
16 liquidity in the market, did Ripple pay its --

17 MR. HANAUER: Let's go off the
18 record.

19 THE VIDEOGRAPHER: Going off the
20 record at 11:41.

21 (Whereupon, a discussion was
22 held off the written record.)

23 MR. TENREIRO: We're on the
24 record, Judge.

25 THE COURT: Thank you.

1 MR. HANAUER: Good morning, your
2 Honor. This is Ben Hanauer with the SEC.
3 We are currently in the middle of the
4 deposition of Mr. Ryan Zagone, who was
5 Ripple's director of regulatory relations.
6 We understand that he had responsibility
7 related to Ripple's lobbying efforts as
8 they relate to the SEC. And we started
9 asking questions related to Ripple's
10 lobbying efforts as they relate to the
11 SEC. Counsel for Ripple objected, citing
12 the Court's relevancy rulings as to
13 written discovery and then instructed the
14 witness not to answer any questions
15 regarding the substance of the lobbying
16 efforts. And at that point the SEC
17 requested Court involvement.

18 We understand the Court's ruling
19 as it related to document production and
20 we understand that was a burden issue.
21 Respectfully, your Honor, we have the
22 witness here for a seven-hour deposition,
23 so we don't think the -- the burden
24 exists. But as a -- as a larger issue,
25 the fair notice defense is being played

1 out not only by your Honor's rulings as
2 they relate to discovery, but they're
3 also -- that defense has been raised to
4 Judge Torres on a motion to strike. And
5 the SEC feels it's appropriate to probe
6 and explore that defense. Namely, we
7 believe that Ripple should -- cannot
8 assert that defense in good faith when it
9 was itself making lobbying efforts with
10 the goal of creating the very regulatory
11 uncertainty that Ripple claims existed at
12 the time.

13 And, your Honor, it's relevant,
14 Ripple's lobbying efforts are very much
15 relevant to the individuals'
16 scienter-based defenses to the extent
17 Defendants Garlinghouse and Larsen were
18 retaining lobbyists with the express
19 purpose of trying to get the SEC to say
20 XRP was not a security.

21 For those reasons, even in light
22 of the Court's relevancy and burden
23 rulings as they relate to written
24 discovery, the SEC believes it's very
25 much important to explore those topics at

1 Mr. Zagone's deposition.

2 MR. CERESNEY: Your Honor, this
3 is Andrew Ceresney. Just some brief
4 thoughts. What -- what Mr. Hanauer said,
5 I'd just direct your Honor to -- I don't
6 know if you have it in front of you, but
7 the June 15th, 2021 ruling that your Honor
8 made on lobbying efforts, I would note
9 your last sentence of this ruling, the
10 final paragraph of that order, and it's
11 clear from the last sentence that your
12 Honor made a ruling both on relevance and
13 on burden. So you said "In the same vein,
14 Ripple's lobbying efforts regarding the
15 status of XRP are not relevant; and any
16 relevancy argument is outweighed by the
17 burden of production."

18 And so from our perspective,
19 your Honor, and obviously you can speak
20 to this directly, but your prior ruling
21 ruled the lobbying efforts were not
22 relevant and you noted in that ruling
23 that the fair notice defense centers on
24 the activities of the SEC, not Ripple's
25 behaviors and cited in case law to

1 support that.

2 And so, therefore, from our
3 perspective, this questioning at the
4 deposition, you've already ruled it's not
5 relevant. You ruled the documents can't
6 be produced, and we don't believe it
7 should occur.

8 I should note that Mr. Hanauer
9 has already spent two plus hours and I
10 think is going to go all seven hours on
11 lots of other issues. This is not the
12 central issue, I think, of the day.
13 Mr. Zagone covered regulatory regulations
14 more broadly and dealt with foreign
15 governments. We're letting the SEC
16 explore all other areas. This is the
17 sole area that we've -- we've instructed
18 the witness not to answer questions on,
19 other, obviously, than privilege.

20 MR. HANAUER: And if I may just
21 briefly respond, your Honor. I would note
22 that in regards to Ripple's lobbying
23 efforts, the -- the only line of
24 questioning we -- we seek as to their
25 substantive efforts are those lobbying

1 efforts as they relate to the -- the SEC
2 and the issue of whether Ripple is a
3 security -- or XRP is a security.

4 MR. CERESNEY: And on that, your
5 Honor, I would just note, I don't really
6 know how to cabin that. You know,
7 lobbying efforts in general for
8 legislation, you know, they could relate
9 to whether something is a security or not.
10 But what regulatory classification, I
11 think that that's a false narrowing,
12 frankly. I think, you know, all lobbying
13 probably relates to something in some
14 sense that might be related to SEC
15 activities.

16 THE COURT: Okay. I'm going to
17 just ask for a few minutes just to review
18 that order. If everybody can just take a
19 brief recess.

20 MR. HANAUER: Great. Thank you.

21 (Pause in the proceedings)

22 THE COURT: Okay. I've had an
23 opportunity to review the docket and to
24 discuss the issue with my law clerk. I'm
25 going to authorize the limited questioning

1 here. I think given that there is this
2 pending motion before Judge Torres,
3 obviously I've ruled in discovery about
4 the fair notice defense, but that is an
5 open question how she's going to interpret
6 it.

7 I did, and I stand by my a
8 ruling that for the purposes of document
9 production, I think the relevancy is
10 sufficiently limited that the burden
11 outweighed the relevancy, and so I stand
12 by my decision with regard to the
13 document production.

14 But if the SEC wants to spend
15 part of its time asking this witness
16 questions related to the lobbying
17 efforts, I'm going to authorize it.

18 MR. CERESNEY: Okay. Your Honor,
19 is there any limitations in terms of -- of
20 depth or -- or burden here or is it -- is
21 it just questions of this witness of his
22 knowledge basically on these issues?

23 THE COURT: I'm not sure exactly
24 what you're asking me. I'm certainly
25 going to allow the SEC to use its time as

1 it sees fit, so I'm not going to limit the
2 amount of time it can spend on this
3 subject. I don't know that it's intending
4 to spend a whole lot of time on it, but
5 I'm not going to limit it. To the extent
6 you're asking me about other witnesses
7 that aren't before me, I'm not sure I want
8 to make a ruling that's reflected in that
9 way.

10 MR. CERESNEY: Okay.

11 THE COURT: Hopefully this
12 ruling gives the parties enough guidance
13 for future depositions.

14 MR. CERESNEY: Okay. Thank you,
15 your Honor.

16 MR. HANAUER: Thank you, your
17 Honor.

18 THE COURT: Thank you,
19 everybody.

20 (Whereupon, a recess is taken.)

21 THE VIDEOGRAPHER: Okay. Back on
22 the record at 12:08.

23 Go ahead.

24 BY MR. HANAUER:

25 Q. Mr. Zagone, before we went off the

1 record, we were on Exhibit 7, on page 2650 of the
2 exhibit.

3 And do you remember I was asking you
4 questions about efforts Ripple made to create a
5 liquid market in XRP?

6 A. I remember the topic, yeah. I see that.

7 Q. And one of the ways Ripple helped create
8 a liquid market in XRP was to pay exchanges to
9 list XRP on -- on those exchanges?

10 MR. HECKER: Objection.

11 A. Was that a question or --

12 Q. Yeah, that's a question.

13 A. Oh, I don't know.

14 Q. You don't know whether Ripple paid
15 exchanges to list XRP?

16 A. I don't --

17 MR. HECKER: Objection.

18 Objection to form. Asked and answered.

19 A. I don't believe we did, but I'm not on
20 the markets team to handle the relationships with
21 the exchanges.

22 Q. And did Ripple have volume incentive
23 programs for either exchanges or market makers?

24 A. According to the diagram here, it did,
25 yeah.

1 Q. Okay. And how -- how did those work?

2 A. I don't know. The column here "Creating
3 Market Liquidity," No. 3, came from our markets
4 team. So I captured that -- I got that
5 information from -- from them.

6 Q. Okay.

7 A. I was primarily focused on No. 2.

8 Q. That was the "Driving Regulatory
9 Certainty"?

10 A. Correct.

11 Q. And your -- your role driving regulatory
12 certainty, did that have anything to do with
13 driving regulatory certainty as it relates to the
14 SEC?

15 A. It related to Ripple as a vendor. XRP
16 was part of xRapid. So it would relate to the
17 classification of XRP.

18 Q. When you say the "classification" as XR
19 -- "of XRP," you mean whether the SEC considered
20 XRP to be a security?

21 A. How it would be classified in the U.S.,
22 commodity, security. Yes.

23 (Whereupon, exhibit is presented
24 and marked SEC Zagone Exhibit RZ-8 for
25 identification.)

1 MR. HANAUER: I'm tendering the
2 witness a document labeled as Exhibit
3 RZ-8, which starts with a Bates number
4 ending in 2018.

5 BY MR. HANAUER:

6 Q. And before I ask you a question about
7 that document --

8 A. Uh-huh.

9 Q. -- in 2017, was XRP used in any of the
10 software products that Ripple sold to banks?

11 A. Prior to 2017? Prior to 2017, all of
12 the products were built on XRP ledger. We had one
13 platform that we were selling all of our -- we
14 were doing connectivity and liquidity on, so XRP
15 was included in that. Over time we evolved the
16 solution to two separate products, xCurrent and
17 xRapid. I'm not sure -- I can't recall the time
18 frame, the year -- the year when we made that
19 split.

20 Q. And did -- did banks ever use the xRapid
21 product?

22 A. The financial institutions did. We --
23 we started rolling out the products -- you need
24 connectivity first to make a payment and liquidity
25 second. Banks generally have a connectivity

1 problem, so we started them first with xCurrent.
2 It was, like, first you have to connect to make a
3 payment. The strategy was get banks to adopt
4 xCurrent for connectivity. As they mature, they
5 need liq -- they need to scale liquidity so then
6 we add xRapid.

7 For money services business, or
8 remittance companies, they don't have a
9 connectivity problem, but they can connect to
10 their own subsidiary overseas. They have a
11 liquidity challenge. So we started those -- that
12 client segment directly with xRapid.

13 Q. Okay. So I -- I get -- so were the --
14 the money transmitters, was that the -- the -- the
15 primary intended purchaser of the xRapid product?

16 A. There were both banks and money
17 transmitters, would -- were intended to use
18 xRapid. The money transmitters don't have a
19 connectivity problem, so they kind of fast track
20 right to xRapid.

21 Q. And when did banks start using xRapid?

22 A. The strategy was to build connectivity
23 first because they -- banks have a connectivity
24 problem today. So they would use xCurrent first
25 to build connectivity. And as they scaled to new

1 currencies or corridors, they need to scale
2 liquidity, they would add xRapid.

3 Q. I'm -- I'm just trying to figure out
4 when did banks start using the xRapid piece?

5 A. In my time, I was -- I left Ripple at a
6 time when the money services businesses were using
7 xRapid. MoneyGram was one of the partners that I
8 was working with. And banks were on the adoption
9 of xCurrent. So we were -- the banks were then,
10 say, moving -- after I left, the strategy was they
11 would move on to xRapid. I wasn't there for that.

12 Q. Yeah. And I just want to focus on
13 when -- when you were there.

14 A. Yep.

15 Q. So at the time you left Ripple, were
16 banks using xRapid?

17 A. They were on the path to.

18 Q. But had not yet started?

19 A. You had to build a network with xCurrent
20 first for connectivity before you can use xRapid
21 for liquidity, and the banks were on the path to
22 use -- of adopting xCurrent. So that was the
23 prerequisite to -- connectivity is the
24 prerequisite to xRapid.

25 Q. And -- and I think I understand that.

1 I'm just trying to get a clear answer.

2 Had banks started using xRapid at the
3 time you left Ripple?

4 A. They hadn't at the time -- that I recall
5 at the time I left. They were on the path to with
6 the xCurrent adoption.

7 Q. Okay. So let's talk about Exhibit 8,
8 please. And Exhibit 8 is an e-mail you sent to
9 various people at DFS on January 31st, 2017?

10 A. That's correct.

11 Q. And what -- what is DFS?

12 A. DFS is the New York Department of
13 Financial Services. So they were XRP II -- they
14 were the regulator for their license.

15 Q. And one of the things you were sending
16 DFS was a audit report?

17 A. Correct.

18 Q. And why were you sending an audit report
19 to DFS?

20 A. I believe it was a required piece of our
21 license.

22 Q. And what was the purpose of the audit?

23 A. It looks like an AML audit. So an audit
24 of our AML program and concerns -- and controls.

25 Q. And A -- AML, that's anti-money

1 laundering?

2 A. That's correct.

3 Q. And the information Ripple sent to DFS
4 in this audit was truthful and accurate?

5 A. I assume so. I was not involved in the
6 audit and we used an external auditor for it.

7 Q. So can I ask you to please turn to
8 page -- of the audit report -- ending in 2027?
9 And do you see the Section 2.1, "Business Model"?

10 A. I see that.

11 Q. And just take a moment to review that
12 section.

13 Do those three paragraphs accurately
14 depict XRP II's business model?

15 (Pause)

16 MR. CERESNEY: I'm going to
17 object on form grounds.

18 A. The piece I -- I don't think is correct
19 is that Ripple Labs created and maintains the
20 Ripple protocol, the Ripple Consensus Ledger.
21 If -- and the way they're using it here, Ripple
22 protocol means XRP ledger.

23 Q. And beyond that, the section is
24 accurate?

25 A. I would also clarify that XRP II is only

1 sold -- XRP to institutional investors and
2 financial institutions is the way I understood it.

3 Q. Is there anything else in that section
4 that's not accurate?

5 A. The last sentence "Presently XRP has
6 limited commercial use." I would argue the work
7 that the work we were doing in the pilots and in
8 development of xRapid was a commercial use of XRP.

9 Q. And XRP II's auditor was representing to
10 New York regulators that XRP had limited
11 commercial use?

12 MR. WARD: Objection to form.

13 MR. CERESNEY: Objection to form;
14 foundation.

15 A. The auditor wrote -- the auditor wrote
16 that it had limited commercial use. I'm not
17 certain if -- what context they're writing that.
18 Is that within our product at the current time or
19 is that more broadly in the market?

20 Q. And that the auditor also represented
21 that XRP is mainly held as a speculative
22 investment by companies and individuals that
23 expected to rise in value as the Ripple network
24 expands?

25 A. I see that they wrote that.

1 Q. Did you --

2 A. It's hard for me to say why people
3 bought XRP or crypto in general. There are many
4 people in the market buying crypto from a more,
5 like, libertarian-type view where they just didn't
6 want to use the U.S. dollar. Is that speculative
7 or not? I -- I don't know.

8 Q. But these are the representations
9 Ripple -- Ripple's auditors made to the New York
10 regulators?

11 MR. HECKER: Objection.

12 Objection to form and the use of "Ripple's
13 auditors."

14 A. This was the -- the audit report that
15 was provided to DFS.

16 Q. When you worked at Ripple, was XRP used
17 primarily for trading?

18 A. I -- I don't know how it was primarily
19 used. Is that question in regards to the company
20 or in general?

21 Q. I'm just asking you, during the time you
22 worked at Ripple, was XRP used primarily for
23 trading?

24 A. I'm not -- I can't speak to the whole
25 market, how it was used.

1 Q. Let's look at Exhibit 13.

2 (Whereupon, exhibit is presented
3 and marked SEC Zagone Exhibit RZ-13 for
4 identification.)

5 MR. HANAUER: And Exhibit RZ --
6 I -- I'm sorry. I tendered the witness an
7 Exhibit labeled -- I tendered the witness
8 a document labeled Exhibit RZ-17 (sic)
9 starting with the Bates number ending in
10 7779.

11 BY MR. HANAUER:

12 Q. Is Exhibit RZ-17 an e-mail chain ending
13 with an e-mail you sent Monica Long on June 19th,
14 2017?

15 A. Are we on 17 or 13?

16 Q. Oh. Thirteen. Thirteen. I'm sorry.

17 A. Okay. Thirteen is an e-mail I sent to
18 Monica Long.

19 Q. Okay. And so I want to direct you to
20 the e-mail starting at the bottom of the first
21 page, the one from [REDACTED] at [REDACTED].

22 (Pause)

23 A. Okay.

24 Q. It -- who is [REDACTED] at [REDACTED]
25 [REDACTED]

1 A. I don't recall who [REDACTED] is. [REDACTED]
2 [REDACTED] was a communications or public relations
3 firm that we used at one time.

4 Q. And do you see how Ms. [REDACTED] -- or
5 Ms. [REDACTED] is asking folks at Ripple if we can go
6 and -- if we can go ahead and share information
7 with Mint?

8 A. I see that, yes.

9 Q. And what was -- what was [REDACTED]

10 A. [REDACTED] was a website that looked -- I
11 believe it's the website that looked at financial
12 services offerings.

13 Q. And then do you see right above
14 Ms. [REDACTED] e-mail, [REDACTED] forwards that e-mail
15 to you and Ms. Long, asks if the submission to
16 [REDACTED] is okay?

17 A. I see that.

18 Q. And then you make -- in the second
19 e-mail on the chain, you make two suggestions and
20 then you write "Otherwise, looks okay to me"?

21 A. Yes, I see that.

22 Q. And you were reviewing Ms. [REDACTED]
23 e-mail to make sure it was fine to -- to send to
24 [REDACTED]?

25 A. That's correct.

1 Q. And so on the second page, do you see --
2 second page of the exhibit, in Ms. [REDACTED] e-mail
3 under heading 4, she writes "XRP is available to
4 trade in 12 countries around the world. Currently
5 it is used primarily for trading"?

6 A. I see that.

7 Q. Did you suggest any edits to the
8 response to Question No. 4?

9 A. I did not.

10 Q. Did you agree at the time, in June 2017,
11 that XRP was used primarily for trading?

12 MR. HECKER: Objection to form.

13 A. That was not a topic that I understood
14 enough to be able to make an edit on.

15 MR. HANAUER: Exhibit 34.

16 (Whereupon, exhibit is presented
17 and marked SEC Zagone Exhibit RZ-34 for
18 identification.)

19 MR. HANAUER: Okay. I'm
20 tendering the witness a document labeled
21 as Exhibit RZ-34 beginning with a Bates
22 number ending in 6147.

23 BY MR. HANAUER:

24 Q. And is Exhibit RZ-34 an e-mail chain
25 ending in an e-mail you sent to [REDACTED]

1 on February 26, 2018?

2 A. That's correct.

3 Q. And who is -- is it Mr. or

4 Ms. [REDACTED]

5 A. Miss.

6 Q. Miss [REDACTED]

7 And what was Miss [REDACTED] position

8 at Ripple?

9 A. She was on the business development team
10 in Europe.

11 Q. And you're providing Miss [REDACTED] with
12 information about the history of the development
13 of the xRapid product?

14 A. Yeah. She was speaking on a panel and
15 she had requested some guidance on the XRP trial
16 that we were running which was -- led to xRapid.
17 And she was -- she had not been involved in that
18 trial.

19 Q. And -- and you're talking about the
20 Ripple money transmittal software products that
21 used XRP?

22 A. Correct. We didn't have a name for it
23 initially, so I -- I short-handed a lot in my own
24 writings around just calling it XRP. We didn't
25 have a name for the software solution yet. It

1 became xRapid.

2 Q. And you write that for that software
3 solution that used XRP in 2017, there was a proof
4 of concept stage involving 12 banks?

5 A. That's correct.

6 Q. And then in 2017, Ripple actually
7 started building the product that became --
8 eventually became known as xRapid?

9 A. Correct.

10 Q. And in 2018, Ripple eventually started
11 deploying that product for commercial use?

12 A. According to this document, yes.

13 Q. And at the time of your e-mail, February
14 2018, xRapid was still in its pilot testing stage?

15 A. So we -- from this time on here, in
16 2018 -- we had finished the -- let's see. We were
17 commercializing the -- the product. The first
18 pilots had already been announced. So we're in
19 the phase of rolling out that product through some
20 pilots.

21 Q. By "pilot," you mean pilot testing?

22 A. Correct.

23 Q. Okay. You -- you can put that down.

24 When did you first become aware that the
25 SEC could determine that XRP was a security and

1 subject to its jurisdiction?

2 MR. CERESNEY: Objection; form.

3 A. In late 2016, early -- or in 2017, I
4 believe. Around there.

5 Q. And how did you become aware of that?

6 A. The -- the media and the market were
7 talking more and more about how to classify
8 digital assets. So I noticed that and that --
9 that's how I -- came on my radar.

10 Q. And what's your understanding of when
11 Mr. Larsen and Mr. Garlinghouse first became aware
12 that the SEC could determine that the -- that XRP
13 was a security subject to its jurisdiction?

14 MR. WARD: Objection to form.

15 MR. CERESNEY: Objection.

16 A. I -- I don't know when they became
17 aware.

18 Q. When did you first have a conversation
19 with Mr. Larsen on that issue?

20 MR. WARD: Objection to form.

21 MR. CERESNEY: Objection to form,
22 foundation.

23 A. I did not have a conversation with Chris
24 on that issue.

25 Q. Have you had conversations with

1 Mr. Garlinghouse on the issue about the SEC,
2 whether it could determine that XRP was a
3 security?

4 A. I had conversations with Brad generally
5 about XRP's classification, more -- even more
6 globally than just the U.S.

7 Q. Now I'm going to focus on the -- the
8 SEC --

9 A. SEC?

10 Q. -- piece of it.

11 A. That was a small -- maybe once or twice
12 we had conversations. The topic of XRP in the
13 U.S., particularly with the SEC, was owned by
14 legal. So I -- legal was in charge of that issue.

15 Q. But you did have conversations with
16 Mr. Garlinghouse on the issue of SEC
17 classification of XRP?

18 MR. CERESNEY: Without the
19 presence of legal. That's the question.

20 THE WITNESS: Yeah.

21 A. Without the presence of legal, no.
22 There's one conversation that I had with Brad and
23 it was more around ensuring support for crypto and
24 blockchain in the U.S. and what we were doing from
25 a -- a general view around ensuring the U.S. could

1 be a leader on these technologies.

2 Q. And --

3 A. It wasn't specific to XRP and the SEC.

4 Q. When was that conversation?

5 A. That conversation was around the end of
6 2018.

7 Q. And -- and I'm trying to be precise on
8 this question and I don't want to probe into any
9 substantive communications.

10 But you referenced having a conversation
11 with Mr. Larsen -- or, I'm sorry, Mr. Garlinghouse
12 and legal on the issue of XRP classification.

13 When did that conversation occur?

14 MR. HECKER: Objection to form.

15 You can answer.

16 A. Let me -- let me clarify. I had a
17 conversation with Brad, or Mr. Garlinghouse, on
18 U.S. competitiveness on blockchain and crypto
19 assets. That was a one-on-one call that we had.

20 Q. And that was the one in late 2018?

21 A. Correct. That was the conversation with
22 Brad. The rest of my conversations were with
23 legal.

24 Q. Okay. So did you ever have a
25 conversation with Mr. Garlinghouse, legal or --

1 well, did you ever have a conversation with
2 Mr. Garlinghouse where lawyers were present where
3 the subject of XRP's classification as a security
4 was discussed?

5 MR. CERESNEY: And that's just a
6 yes or no.

7 A. No.

8 Q. And have you had conversations with
9 Ms. O'Gorman about the subject of XRP's
10 classification as a security?

11 A. Yes.

12 Q. And when did those conversations start?

13 A. Those conversations started when I
14 became aware that this was an issue in that 2017
15 time frame. So I raised it with her. She was my
16 manager at the time. So I raised the conversation
17 with her, the topic with her.

18 Q. And what did you guys talk about?

19 A. I raised that this -- it's a growing
20 topic in the media around how generally crypto
21 assets should be classified. Uncertainty around
22 the framework in the U.S. I asked if we had
23 guidance and she said we did and pointed me to our
24 legal team to get that.

25 Q. Were you ever involved in promoting the

1 message that XRP should not be classified as a
2 security?

3 MR. CERESNEY: Objection to form.

4 MR. HECKER: Objection to form.

5 A. I was involved in sharing educational
6 content around XRP and the company's view that it
7 was not a security.

8 Q. When you say "sharing the company's
9 view," you mean sharing the company's view to the
10 public that XRP was not a security?

11 A. Correct.

12 Q. When did Ripple first learn that the SEC
13 was bringing lawsuits involving digital assets?

14 MR. HECKER: Objection to form.

15 A. I can't speak for the company, when the
16 company first learned. So I don't know when the
17 company first learned.

18 Q. How about you? When did you first
19 learn?

20 A. I first learned around the time -- there
21 was a number of cases, particularly around
22 celebrities promoting ICOs. And that was when --
23 that's when the topic came up. The exact time
24 frame I can't remember, but those are the types of
25 cases I remember seeing.

1 (Whereupon, exhibit is presented
2 and marked SEC Zagone Exhibit RZ-30 for
3 identification.)

4 MR. HANAUER: I just tendered the
5 witness a document labeled Exhibit RZ-30,
6 which begins with a Bates number ending in
7 2232.

8 BY MR. HANAUER:

9 Q. And Exhibit 30 is an e-mail that [REDACTED]
10 [REDACTED] sent you on May 21st, 2015?

11 A. That's correct.

12 Q. And do you see how she starts -- Ms. [REDACTED]
13 starts her e-mail, "Ryan, thanks for talking to me
14 last week"?

15 A. I see that.

16 Q. In what capacity were you interacting
17 with Ms. [REDACTED]

18 A. I don't recall Ms. [REDACTED] or this e-mail.

19 Q. Was she your -- was she Ripple's lawyer?

20 MR. WARD: Objection.

21 MR. CERESNEY: Objection to form,
22 foundation.

23 A. I don't know. I can't recall her.

24 Q. Do you understand her to be providing
25 you legal advice in Exhibit RZ-30?

1 MR. WARD: Objection.

2 MR. CERESNEY: And -- and I

3 don't -- before you answer that, you

4 should at least look through it more than

5 you would otherwise.

6 A. I did not understand her to be giving

7 legal advice to us at this time, no.

8 Q. And do you see how Ms. [REDACTED] e-mail

9 references a generic slide deck that she had been

10 using to make continuing legal education credit

11 presentations?

12 A. I see that.

13 Q. Okay. And is that slide deck what is

14 attached to her e-mail in Exhibit 30?

15 MR. WARD: Objection.

16 A. I see that. It looks from the comments

17 here, she says "I really enjoyed your historical

18 perspective on the [REDACTED] call." I gave a

19 presentation to the [REDACTED] team -- or [REDACTED]

20 hosted on the evolution of blockchain and crypto

21 as a use -- as a tool for payments. I recall

22 that. It looks like she was looking for some of

23 the content I developed that was, like, payment

24 focused.

25 Q. And -- and she's sending you a -- a

1 presentation attached to her e-mail, correct?

2 A. Yeah. She sent me one of her
3 presentations, yeah.

4 Q. And I want to refer you to the page of
5 the presentation ending in 2247. That page
6 contains a public statement by the then-chair of
7 the SEC, Mary Jo White?

8 A. I see that.

9 Q. And Mary Jo White was telling Congress
10 certain virtual currencies could be subject to SEC
11 regulation?

12 MR. WARD: Object to the form.

13 A. I see the -- the quote there. In this
14 e-mail exchange -- I don't even think I read this
15 attachment. I didn't ask for it. She's just
16 voluntarily sending it to me as a -- I believe
17 like a pitch to become her client. It wasn't
18 requested. I didn't use it.

19 Q. Did you read it?

20 A. No. I don't recall reading it.

21 Q. Okay. And then I just want to refer you
22 to the next page on the exhibit.

23 Were you aware that by 2015 the SEC had
24 brought enforcement actions involving investments
25 related to bitcoin?

1 A. I can't recall.

2 Q. If Ripple wanted to see what type of
3 cases the SEC was bringing, would that information
4 have been publicly available to Ripple?

5 MR. WARD: Object to the form.

6 A. If Ripple wanted to see what type of
7 cases the SEC was bringing? It would be an SEC
8 press release, I'd assume.

9 Q. Did you ever review the SEC website?

10 A. They were not part of my scope of work.
11 That was the legal team. No. I did -- yes, I did
12 review the SEC website to learn about the issue --

13 Q. What issue --

14 A. -- learn about classification of digital
15 assets, but that was not my scope of work or
16 responsibility.

17 Q. And when did you review the SEC website
18 to learn about the SEC's classification of digital
19 assets?

20 A. I can't recall the first time I looked
21 at it or the frequency. I recall reading the DAO
22 report when that came out. That's what I recall.

23 MR. HANAUER: Thirty-one.

24 (Whereupon, exhibit is presented
25 and marked SEC Zagone Exhibit RZ-31 for

1 identification.)

2 MR. HANAUER: I tendered the
3 witness a document labeled as Exhibit
4 RZ-31 with a Bates number -- beginning
5 with a Bates number ending in 8880.

6 BY MR. HANAUER:

7 Q. And is Exhibit 31 a copy of an e-mail
8 chain ending with an e-mail from you to
9 Ms. O'Gorman on January 3rd, 2017?

10 A. Correct.

11 Q. And I want to refer you to the -- the
12 second e-mail in the chain, the one from
13 Ms. O'Gorman, where she writes "Note: We will
14 also need to add XRP as not a security to the Q1
15 priorities (more of a January 2017 priority)."

16 A. I see that.

17 Q. What did you understand her to be
18 referring to?

19 A. Let me take a look.

20 (Pause)

21 A. So I'm asking -- she's asking for my
22 priorities for the year -- the quarter, I'm sorry.
23 And she's noting that we need to add XRP as not a
24 security to those priorities.

25 Q. Okay. And if you could explain that,

1 what that would mean as to how that's one of your
2 priorities?

3 A. To assist legal in their analysis of the
4 issue.

5 Q. And was that one of your priorities in
6 2017, January of 2017?

7 A. It says "correct" on the security
8 issues, so, yes, it was incorporated into the
9 priorities.

10 Q. And beyond working with legal on the
11 issue, was it also one of your priorities to work
12 with other departments at Ripple to give them
13 guidance on how to talk about XRP with the goal of
14 having XRP not be classified as a security?

15 MR. HECKER: Objection to form.

16 A. We -- my role there was sometimes
17 developing collateral for assisting [REDACTED] or
18 [REDACTED] in building collateral, the general
19 counsels. At times that was shared with others at
20 Ripple to educate them on the background of XRP,
21 how the XRP ledger works, and the company's view
22 on how it should be classified.

23 Q. What do you mean -- you mentioned
24 collateral with the legal department?

25 A. I mean like a paper or presentations,

1 some reference material.

2 Q. Okay.

3 MR. HANAUER: Could we go to...

4 Q. Oh. What efforts did you make in 20 --
5 in Q1 -- in the first quarter of 2017 on this
6 issue of whether XRP was classified as a security?

7 MR. HECKER: Objection to form.

8 A. I can't recall in that quarter what we
9 -- what we were doing -- or what I was doing.

10 Q. How would -- what was your understanding
11 of how you would have met that priority? How
12 would you have satisfied it?

13 MR. WARD: Object to the form.

14 A. Assist -- assist legal in what they
15 needed assistance with. Building the collateral
16 or -- yeah. My role there was building
17 collateral, sales -- or the sales deck, a
18 presentation, or content summarizing the work
19 legal had done.

20 Q. Why did it matter to Ripple whether XRP
21 was classified as a security?

22 MR. HECKER: Objection to form.

23 MR. CERESNEY: And -- and on
24 this, I just want to caution you not to
25 share information you gathered from legal.

1 A. We -- we didn't believe it was a
2 security.

3 Q. But, I guess, what -- what's the
4 significance to Ripple whether XRP's classified as
5 a security or not?

6 MR. HECKER: Objection to form.

7 A. The -- the implications of it -- I'm not
8 a securities expert, so I -- I don't know.

9 Q. Did you have any understanding of what
10 it would mean for Ripple if the -- if the SEC
11 classified XRP as a security?

12 MR. WARD: Objection.

13 MR. CERESNEY: Objection.

14 And -- and to the extent that
15 your understanding comes from discussion
16 with counsel, I'll instruct you not to
17 disclose that information.

18 THE WITNESS: Okay.

19 A. My understanding came from discussions
20 with counsel.

21 Q. Did you have any understanding that
22 didn't come from discussions with counsel?

23 A. No.

24 (Whereupon, exhibit is presented
25 and marked SEC Zagone Exhibit RZ-9 for

1 identification.)

2 MR. HANAUER: I tendered the
3 witness a document marked as Exhibit RZ-9
4 with a Bates number ending in 3291.

5 BY MR. HANAUER:

6 Q. Is Exhibit RZ-9 a copy of an e-mail you
7 sent to Ms. O'Gorman and Mr. Vias on March 9th,
8 2017?

9 A. Correct.

10 Q. And you are forwarding them an article
11 from the American Banker?

12 A. That's correct.

13 Q. And the article talked about whether
14 certain digital assets should be classified as
15 securities?

16 MR. WARD: Object to the form.

17 A. The article -- "Are Crypto 'Tokens'
18 Securities by Another Name?" is the title. I
19 assume it's around how to classify crypto tokens.

20 THE REPORTER: Repeat. Repeat.

21 THE WITNESS: Repeat my answer?

22 THE REPORTER: Yes, please.

23 A. The title of the article is "Are Crypto
24 'Tokens' Securities by Another Name?" So I assume
25 it's around the classification of crypto tokens.

1 Q. And in sharing the article with
2 Ms. O'Gorman and Mr. Vias, you're telling them
3 that the article discusses whether Ethereum is a
4 security or not?

5 MR. WARD: Object to the form.

6 A. From the e-mail, it looks like the
7 article was focused on Ethereum.

8 Q. And you're telling Ms. O'Gorman and
9 Mr. Vias is -- is whether Ethereum is a security
10 or not hinges on several factors, including how
11 it's discussed when being sold?

12 MR. WARD: Object to the form.

13 A. Correct, I say that.

14 Q. What was your understanding of those
15 factors that determined whether a digital asset
16 was a security?

17 MR. CERESNEY: And, again, here,
18 just to caution you not to share
19 information that you obtained through
20 discussions with counsel.

21 A. My understanding of the securities issue
22 came from discussions with counsel.

23 Q. Any other sources?

24 A. News articles, I guess.

25 Q. What did you learn from the news

1 articles?

2 MR. CERESNEY: To the extent you
3 can answer it --

4 A. Yeah, I -- I can't recall.

5 Q. Then you tell them "XRP is materially
6 different from Ethereum"?

7 A. Yes.

8 Q. How is XRP materially different from
9 Ethereum?

10 A. In the -- how the platforms confirm
11 transactions is different. One uses proof of
12 stake; the other uses proof of work.

13 Q. How else were they materially different?

14 A. Ethereum has some features where you can
15 create a smart contract on Ethereum, which XRP
16 ledger does not. So the technical features are
17 different.

18 Q. So did the -- based on your
19 understanding, did -- did the differences between
20 Ethereum and XRP, did it make Ethereum more like a
21 security or XRP more like a security?

22 MR. HECKER: Objection to form,
23 foundation.

24 A. I'm not qualified to say either way.

25 Q. And then you write at the end of that

1 second paragraph, "It does highlight the fact that
2 what we say and how we describe it is important"?

3 A. Uh-huh.

4 Q. What do you mean by that?

5 MR. WARD: Object to the form.

6 A. To ensure we're describing it
7 accurately.

8 Q. Describing what?

9 A. Our product and XRP.

10 Q. And why is that important?

11 A. To make sure the market has an accurate
12 understanding of XRP versus Ripple and the
13 difference between those two, the company and the
14 software.

15 Q. Was how Ripple described XRP important
16 to the issue of whether XRP was classified as a
17 security?

18 MR. CERESNEY: Object to the
19 form.

20 A. My work there was to ensure we were
21 describing it accurately. That Ripple was
22 describing itself and XRP accurately. To the
23 degree it factored into is it a security or not
24 wasn't a -- was a guidance from legal.

25 Q. And in the third paragraph you write

1 "Antoinette and I want to host a roundtable with
2 the XRP team to discuss this issue in detail"?

3 A. Uh-huh.

4 Q. What's the "XRP team" that you're
5 referencing there?

6 A. I used XRP pretty broadly to capture
7 xRapid. So XRP team here would have been the
8 xRapid team, so the product team, and the -- the
9 teams that were supporting that product, be it
10 sales, ops, communications.

11 Q. And you write "We want to arm the team
12 with an understanding of this issue for both XRP
13 and Ethereum"?

14 A. Uh-huh.

15 Q. What steps did you take to arm the team?

16 A. We -- we made a presentation or
17 collateral, as we talked about previously, that
18 outlined XRP, particularly --

19 MR. CERESNEY: Let me just
20 caution you. You can talk at a high level
21 about the topic of the collateral.

22 THE WITNESS: Okay.

23 MR. CERESNEY: But I wouldn't --
24 but please don't go beyond that because
25 we've claimed privilege on that collateral

1 as being influenced by discussions with
2 counsel.

3 THE WITNESS: True.

4 A. So this -- this was -- I'm recalling
5 things now. So This was an output of the Q1 2017
6 objectives. The -- this is the work with legal on
7 summarizing their work into collateral. We -- the
8 collateral we built compared ICOs -- it was really
9 more about ICOs than -- ICOs versus Ripple, how
10 they're different.

11 Q. Did -- did this roundtable with the XRP
12 team take place?

13 A. It did.

14 Q. When?

15 A. 2017. In 2017. After this e-mail.

16 Q. Who participated in the roundtable?

17 A. The roundtable was led by [REDACTED] I
18 assisted with the collateral in presenting some
19 points on the call. The participants included XRP
20 markets teams or the markets team, the xRapid
21 product team, and communications.

22 Q. And as of early March 2000 teen (sic),
23 had Ripple been accurately describing XRP in its
24 public communications with the market?

25 A. Generally, I felt so, yes.

1 Q. Then what was the need for the -- the
2 roundtable?

3 A. We had an in -- we had a growing team.
4 This is the time when we had many new hires coming
5 onboard, particularly on the product and the comms
6 team. So we wanted to ensure they had adequate
7 background on how -- what the company was, how the
8 products work.

9 And we note -- specifically we noted
10 there was incorrect articles in the media that
11 often conflated Ripple and XRP incorrectly. And
12 we wanted to make sure that the comms team
13 understood what was correct and what was incorrect
14 so they weren't inadvertently repeating something
15 that was wrong.

16 MR. HANAUER: Exhibit 45.

17 I'm going to do one more exhibit
18 on this topic and then get to lunch.

19 MR. CERESNEY: Is that okay?

20 THE WITNESS: Definitely.

21 (Whereupon, exhibit is presented
22 and marked SEC Zagone Exhibit RZ-45 for
23 identification.)

24 MR. HANAUER: I tendered the
25 witness an exhibit labeled RZ-45,

1 beginning with a Bates number ending in
2 3483.

3 BY MR. HANAUER:

4 Q. And you're not -- I don't believe you're
5 on -- a recipient of this e-mail, but I want to
6 refer you to the third -- second page of the
7 exhibit, the one ending in 3483 (sic).

8 A. Uh-huh.

9 Q. And do you see how there's a reference
10 at the very bottom to an "XRP team discussion,
11 ICOs, securities and commodities analysis"?

12 MR. HECKER: Sorry. And just to
13 be clear it's Bates 3484.


14 MR. HANAUER: Thank you. Thank
15 you, Counsel. I haven't had my lunchtime
16 coffee.

17 MR. CERESNEY: No worries.

18 BY MR. HANAUER:

19 Q. This XRP team discussion, is that the
20 one that you just talked about when we were
21 discussing Exhibit 9?


22 A. That's correct, yes.

23 Q. And is that the one that Ms. 
24 attended?

25 A. Yes.

1 Q. And then going to the very top of
2 Exhibit 45, the first e-mail there, it says "Ryan
3 put together a strong deck that summarizes the key
4 points."

5 A. Uh-huh.

6 Q. Is -- do you understand that deck to be
7 the collateral you referenced that you prepared
8 for Ms. 

9 A. Correct.

10 MR. HANAUER: Okay. Let's go off
11 the record.

12 THE VIDEOGRAPHER: Okay. Going
13 off the record at 1:03.

14 (Whereupon, a luncheon recess
15 was taken.)
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A F T E R N O O N S E S S I O N

THE VIDEOGRAPHER: Back on the
record at 1:40 p.m.

Go ahead.

(Whereupon, exhibit is presented
and marked SEC Zagone Exhibit RZ-18 for
identification.)

MR. HANAUER: I just tendered the
witness a document labeled as Exhibit
RZ-18 starting with a Bates number ending
in 3070.

BY MR. HANAUER:

Q. And Exhibit RZ-18, a copy of an e-mail
sent from [REDACTED] to Mr. Vias, copying you
and others, dated April 6, 2018?

A. That's correct.

Q. And who is Mr. [REDACTED]

A. Mr. [REDACTED] is a counsel at Ripple.

Q. And some of the recipients of his e-mail
are from [REDACTED]

What -- what is that?

A. [REDACTED] was a relationship that our markets
team maintained. I'm not certain what they do.

Q. And do you see how attached to the
e-mail to [REDACTED] is what appears to be a letter to

1 the United Kingdom Financial Conduct Authority?

2 A. I can't tell who the letter is for
3 actually, who the letter is to.

4 Q. Right, because that's redacted. But
5 let's start off looking at the attachments line of
6 the e-mail on Exhibit RZ-18.


7 A. Ah, okay. I'm sorry. I see it. UK
8 FCA.

9 MR. HECKER: Just for the record,
10 it looks like there's two attachments:
11 One is "letter(redacted).pdf" and the
12 other is "UK FCA comment letter."

13 Are you representing that the --
14 this attachment is the second attachment?

15 MR. HANAUER: Well, that's a good
16 point. Let's try and clear that up.

17 BY MR. HANAUER:

18 Q. Do you have an understanding of what
19 this letter is that's attached to Mr. 
20 e-mail?

21 MR. WARD: Objection.

22 A. Briefly looking at it, no, I don't.

23 Q. Have you ever seen a letter like that
24 before?

25 A. I do not recall seeing that before.

1 Q. Okay. So I want to ask you some
2 questions about -- about the letter.

3 Can you go to page ending in 072,
4 please? Do you see the section that says "Digital
5 Assets and SEC Guidance"?

6 MR. CERESNEY: Again, Ben, just
7 for the record, the letter appears to
8 be -- it's got page 1 of the letter and
9 then it appears to skip to page 8 and then
10 page 9. So this looks like an excerpt.

11 MR. HANAUER: Right. And I can
12 represent this is exactly how -- you can
13 see from the Bates labeling this is
14 exactly how it was produced to us from --
15 from Ripple.

16 MR. CERESNEY: Yeah. I just want
17 the witness to understand that it's an
18 excerpt.

19 MR. HANAUER: Yes, of course.

20 MR. WARD: And I'll also just
21 note for the record, again, there appears
22 to be another attachment that appears to
23 go along with this.

24 A. So this does not look like the letter to
25 the FCA.

1 Q. Okay. What was the letter to the FCA?

2 A. I can't recall without having seen it.

3 Q. Were -- were you involved in writing the
4 letter -- writing a letter to the FCA in July
5 2017?

6 A. I -- I could have been, but not seeing
7 the letter, I don't know.

8 Q. Okay. So do you see on page 3072 where
9 it says -- you know, that paragraph "Digital
10 Assets and SEC Guidance"?

11 A. Yes.

12 Q. Do -- do you see the reference to a case
13 called SEC v. W.J. Howey Company?

14 A. I see that, yes.

15 Q. Were you aware when you worked at Ripple
16 that the Supreme Court's decision in SEC v. Howey
17 provided a test for determining whether a
18 financial instrument is a security under federal
19 law?

20 MR. CERESNEY: Objection to form.

21 I think that -- it's actually not a test
22 for whether a financial instrument is a
23 security. It's a test for whether the
24 financial instrument is an investment
25 contract under federal law.

1 THE REPORTER: I can't hear you,
2 sir.

3 MR. CERESNEY: It's a test not
4 for whether it's a security but whether a
5 financial instrument is an investment
6 contract under federal law. I assume that
7 your question -- request means the same --
8 similar question, but I want for the
9 record to be clear.

10 BY MR. HANAUER:

11 Q. You can -- you can answer it if you
12 understand.

13 A. I'm aware of Howey.

14 Q. And are you -- when you worked at Rip --
15 when you worked at Ripple, you were aware of
16 Howey, correct?

17 A. Correct. Yes.

18 Q. And when you worked at Ripple, were you
19 aware that the SEC could use the Howey test to
20 determine whether XRP was a security or not?

21 MR. CERESNEY: Objection.

22 And instruct you not to reveal
23 anything about discussions with counsel.
24 So if the only source of information to
25 answer the question is discussions with

1 counsel, then I instruct you not to
2 answer.

3 A. My awareness of Howey came from -- came
4 from counsel.

5 Q. You had mentioned you had read the Dow
6 report?

7 A. The Dow report? Yes, I read the Dow
8 report.

9 Q. And the Dow report contained a
10 discussion of Howey?

11 A. I can't recall what was in that report.

12 Q. Were you aware that the Dow report
13 described certain factors that the SEC considered
14 when determining whether a digital asset is a
15 security?

16 A. I -- I haven't looked at it since I read
17 it. And it's been many years, so I can't recall.

18 Q. Do you remember when you read it while
19 working at Ripple?

20 A. I think I read it when it came out.

21 Q. And that was in July 2017?

22 A. That's the date that it was published.
23 I remember it coming out and it was pretty big
24 news. We read it.

25 Q. And after reading the Dow report, you

1 were aware that the SEC determined that the
2 digital asset described in that report was a
3 security?

4 MR. CERESNEY: Objection to form.

5 A. I can't recall. I read it, but the DAO
6 report was -- DAO is very different from the XRP.

7 Q. And that's based on your own
8 understanding or something you learned from
9 counsel?

10 A. In my -- in my own understanding, very
11 high level understanding of the DAO.

12 Q. Okay. So how -- how is the DAO token
13 different from XRP excluding what you've learned
14 from counsel?

15 A. From my own understanding, XRP wasn't
16 created or didn't run as an organization, this
17 autonomous organization. It was a payment -- we
18 were using it as a payments tool. It's different
19 than the DAO, which was set up as an organization.

20 Q. And when you read the Dow report, were
21 you aware that the SEC could eventually determine
22 that XRP was a security?

23 A. That was not my understanding when
24 reading the DAO report.

25 Q. I'm not asking your understanding of --

1 that you believed the SEC would determine XRP was
2 a security. I guess, were you aware that the SEC
3 could eventually come to that determination?

4 MR. HECKER: Objection; asked and
5 answered.

6 A. Could the SEC examine XRP?

7 Hypothetically, yeah, they could.

8 Q. And going to the -- the bottom of page
9 072 of Exhibit 18, do you see how it references "a
10 legal memorandum from a reputable law firm that
11 supports a finding that XRP is not a security
12 under U.S. law"?

13 A. I see that, yes.

14 Q. Do you have an understanding of what
15 that's referring to?

16 A. Because we got -- our legal team got
17 counsel to examine if XRP is a security and they
18 found that it was not.

19 Q. And have you seen any -- have you seen
20 such a memorandum?

21 A. No, I saw -- from what I recall, I saw
22 summary points of the memorandum, but not the
23 actual memorandum.

24 Q. Do you know what law firm provided that
25 memorandum to Ripple?

1 A. No.

2 (Whereupon, exhibit is presented
3 and marked SEC Zagone Exhibit RZ-15 for
4 identification.)

5 MR. HANAUER: And I tendered the
6 witness an exhibit labeled RZ-15, which
7 begins with a Bates number ending in 47 --
8 or, I'm sorry, ending in 47977.

9 BY MR. HANAUER:

10 Q. And is Exhibit RZ-15 a copy of an e-mail
11 chain ending with an e-mail you sent on October
12 26th, 2017?

13 A. That's correct, yes.

14 Q. And then the next -- do -- do you see
15 the -- there's an e-mail in Exhibit RZ-15 from a
16 [REDACTED] at HitBTC.com?

17 A. Yes, I see that.

18 Q. What was HitBTC?

19 A. I don't know. It looks like this was
20 forwarded to me from the markets team.

21 Q. Do you see there's a reference to
22 listing XRP on -- the words of the e-mail are "our
23 exchange"?

24 A. Okay. Yep.

25 Q. Does this refresh your recollection

1 whether HI -- HitBTC was a digital asset exchange?

2 A. It would seem so from the wording here,
3 but I -- I don't recall who HitBTC is.

4 Q. And did you -- do you see that H --
5 HitBTC was telling Ripple that it would not list
6 financial instruments classified as securities on
7 its exchange?

8 A. Yes, I see that.

9 Q. And do you see that HitBTC wanted Ripple
10 to certify that XRP could not be classified as a
11 security by the SEC?

12 A. Yes, I see that.

13 Q. And you suggest forwarding this inquiry
14 to Ms. O'Gorman and Ms. [REDACTED]

15 A. That's correct.

16 Q. How did Ripple end up responding to
17 HitBTC?

18 A. I don't know.

19 Q. Did Ripple certify to HitBTC that XRP
20 could not be classified as a security by the SEC?

21 MR. HECKER: Objection;

22 foundation.

23 A. I don't know how we responded. I
24 directed it to [REDACTED] the general counsel -- I'm
25 sorry, legal team, and to Antoinette O'Gorman, the

1 compliance officer.

2 Q. Do you have an understanding whether
3 HitBTC ultimately allowed Ripple to list XRP on
4 its exchange?

5 A. I don't know.

6 Q. Do you know if Ripple eventually listed
7 XRP on HitBTC exchange?

8 A. I don't know. I can't recall HitBTC.

9 Q. Were there other exchanges that told
10 Ripple that the exchange could not list XRP if XRP
11 could be classified as a security?

12 A. Not that I recall coming to me. There
13 could have been others that came to the markets
14 team.

15 Q. Are you aware of any?

16 A. Not that I recall. Not that came to me.

17 Q. When was Ripple first able to get XRP
18 listed on a major United States exchange?

19 MR. CERESNEY: Objection; form.

20 A. What -- what would you consider major?

21 Q. Well, okay. When was Ripple first able
22 to get XRP listed on a United States digital asset
23 exchange?

24 MR. HECKER: Same objection.

25 MR. CERESNEY: The question was

1 when Ripple was able to get it listed --
2 is that the question? -- or when XRP was
3 listed on a major exchange?

4 MR. HANAUER: That's fair.

5 BY MR. HANAUER:

6 Q. When -- when was XRP first listed on a
7 United States digital asset exchange?

8 A. First that I became aware of a listing
9 was Bitstamp. I'm not sure if that was the Europe
10 or the U.S. subsidiary of Bitstamp. That was the
11 first one and that was in my early days at Ripple
12 in 2014, 2015.

13 Q. And you don't know whether -- when --
14 when was -- when did XRP first get listed on a
15 U.S. exchange, U.S. based exchange?

16 A. Bitstamp could have been a U.S.
17 exchange.

18 MR. HANAUER: Seventeen.

19 (Whereupon, exhibit is presented
20 and marked SEC Zagone Exhibit RZ-17 for
21 identification.)

22 BY MR. HANAUER:

23 Q. And -- and before you look at that
24 document, a couple minutes ago you were telling me
25 about -- I asked you about a law firm memo and you

1 said you had received a summary of that memorandum
2 but not the memorandum itself.

3 A. I recall receiving bullet points that
4 summarized the memorandum, but I don't recall
5 receiving the memorandum.

6 Q. Do you know who else at Ripple received
7 those bullet points?

8 A. I -- I don't.

9 MR. HANAUER: So I tendered the
10 witness a document labeled RZ-17,
11 beginning with the Bates number ending in
12 1610.

13 Q. And is Exhibit RZ-17 a copy of an e-mail
14 chain ending with an e-mail you sent dated April
15 5th, 2018?

16 A. That's correct, yes.

17 Q. And do you see how the -- the e-mail
18 chain begins with Mr. [REDACTED] forwarding you an
19 article he had received from the MIT Tech Review?

20 A. I can't tell if I received this from
21 [REDACTED] or if I was copied in from [REDACTED]

22 Q. But at -- but at some point, you -- in
23 the chain, you received an MIT Technology Review?

24 A. That's correct. At some point I -- I
25 received this.

1 Q. And I refer you to the page of the
2 exhibit, the third page of the exhibit, the one
3 with the Bates number ending in 612.

4 Do you see the paragraph that says --
5 begins "Also, hold on, is XRP a security?"

6 A. I see that, yes.

7 Q. And after that it says "So far, Ripple
8 has failed to land its token, called XRP, on a
9 major U.S. exchange"?

10 A. I see that statement.

11 Q. Was that statement accurate in April of
12 2018?

13 A. I'm not certain. I can't recall
14 when there was broader listings. I would say the
15 statement's inaccurate because they're saying that
16 Ripple failed to do this, but for me, the
17 exchanges that I was aware of, you can openly list
18 XRP. You don't have to come to Ripple.

19 Q. But Ripple did -- I think you had talked
20 earlier about how -- how Ripple made efforts to
21 get XRP listed on exchanges?

22 MR. HECKER: Objection to form.

23 A. Ripple made efforts to ensure --
24 Ripple's work was focused on ensuring we had
25 enough liquidity to operate xRapid in a country.

1 That ties back to the earlier slide we looked at
2 with the stair steps.

3 So that could -- yeah, the work we were
4 doing was around ensuring there's a liquidity
5 ecosystem to support there's xRapid. We had
6 enough liquidity to make an xRapid payment.

7 Q. Right. And one of the things Ripple did
8 in its efforts to create more liquidity was to
9 attempt to get XRP listed on more exchanges?

10 A. For -- for countries that I recall, it
11 was already listed. So the work that we were
12 doing was connecting xRapid to that exchange where
13 it was listed already so that the exchange could
14 process an xRapid instruction and pay out. I'm
15 not -- XRP was pretty openly listed in many
16 countries because there was already a regulatory
17 framework in place, particularly the ones we were
18 looking at: Philippines, Mexico, UK.

19 Q. In 2018, was Ripple openly listed on
20 United States exchanges?

21 MR. CERESNEY: Objection; asked
22 and answered.

23 A. I believe so, yes.

24 Q. So did you disagree with the article's
25 contention that Ripple had failed to land its --

1 had failed to land XRP on a major U.S. exchange?

2 A. I -- I do disagree with that. I bought
3 it from -- previous to this on a -- on a U.S.
4 exchange.

5 Q. Which one?

6 A. I bought on -- I had an account on
7 Bitstamp and I bought through Binan -- not
8 Binance. Genesis.

9 Q. When was that?

10 A. 2017.

11 Q. And do you see how the article mentions
12 the SEC is still trying to determine which
13 cryptocurrencies meet the definition of a security
14 and which do not?

15 A. I see that, yes.

16 Q. And in April 2018 were you aware that
17 the SEC could eventually determine to consider XRP
18 as a security?

19 A. I wasn't in a place to really judge what
20 risk we had with the SEC. That was -- that was on
21 legal to decide. It was ultimately legal.

22 Q. But you understood there was some risk
23 the SEC could eventually determine that the XRP
24 was a security?

25 MR. HECKER: Object. Objection

1 to form.

2 MR. CERESNEY: And also instruct
3 the witness to answer separate and apart
4 from discussions with counsel.

5 A. I -- I understood our company's position
6 was we felt it was not a security.

7 Is there a hypothetical risk in there
8 that SEC could? I -- I wouldn't be able to say.
9 I don't know. I did not know enough to have an
10 informed view on that.

11 Q. Did the SEC ever tell Ripple that XRP
12 was not a security?

13 A. I never communicated with the SEC.

14 MR. WARD: Objection to form.

15 Q. Were you aware of anyone from the SEC
16 telling that to anyone at Ripple?

17 A. I wasn't aware.

18 Q. And then going to the first page of
19 Exhibit 17, in your e-mail you write "The silence
20 from the company has created a void that others
21 are filling with whatever info they can find."

22 A. Uh-huh.

23 Q. "I've raised to marcomm the need for a
24 brief paper (two to three pages) that gives a
25 high-level summary of XRP's history and

1 classification. I feel we need to put a stake in
2 the ground. Currently there is not one, resulting
3 in a lot of incorrect info."

4 A. I see that, yes.

5 Q. So are you writing that Ripple needs to
6 do a better job conveying the message that XRP is
7 not a security?

8 MR. HECKER: Objection to form.

9 A. I'm writing that the company had not
10 been -- not engaged publicly on history of XRP and
11 its classification. And I felt we needed to
12 because the market was starting to create
13 incorrect information about that. So incorrect
14 information on how XRP worked, a conflation
15 between XRP and Ripple. We saw a lot of incorrect
16 press reports and I thought the -- my view was the
17 company should be more proactive and leaning
18 forward to address that.

19 Q. Any of these issues related to XRP's
20 classification as a security?

21 A. Its history and how it worked and I put
22 in here a classification.

23 Q. Did marcomm -- what is marcomm?

24 A. Marcomm was shorthand for the marketing
25 and communications team.

1 Q. And did marcomm ever produce a -- a
2 paper that gave a high-level summary of XRP's
3 history and classification?

4 A. I don't recall them producing a paper,
5 but they did become more -- more vocal on our
6 views.

7 Q. And why did it matter to Ripple what the
8 market thought about XRP as it related to the
9 issue of whether XRP was a security or not?

10 MR. HECKER: Objection to form.

11 A. Yeah, it mattered to me because the --
12 there was incorrect press reports coming about,
13 which -- and I saw a risk that there's more
14 incorrect information, the less likely a bank
15 would accurately understand what we were trying to
16 do, how the product worked, and engage with us.

17 So I was interested in correcting what
18 we saw as incorrect reports to ensure we had
19 accurate information in the public.

20 Q. Why were banks interested in the
21 classification issue of XRP being classified as a
22 security or not?

23 A. If they were going to use a product --
24 if a bank was going to use a product that --
25 xRapid -- that leverages XRP, in my view they

1 would do their due diligence on that technology to
2 ensure that it met all the regulatory
3 requirements, et cetera. Banks want to know the
4 rules of the road before they use that tech --

5 THE REPORTER: Repeat the last
6 part.

7 THE WITNESS: I'm going too fast.
8 Sorry. Sorry.

9 A. The -- a bank would want to ensure that
10 they know the rules of the road before they engage
11 that technology.

12 So it was important to me that they had
13 accurate information.

14 Q. And -- and I -- why would it be
15 important to a bank whether XRP was classified as
16 a security or not?

17 A. For me, it was important to a bank to
18 accurately understand what they were using, the
19 technology they were using, under their -- under
20 their due diligence policy.

21 Q. So did marcomm end up preparing that
22 two- to three-page paper you were discussing in
23 Exhibit 17?

24 A. I can't recall if we produced a paper,
25 but we did become more vocal on our view.

1 Q. The law firm memorandum I had asked you
2 about, about XRP's classification as a security,
3 did Ripple ever share that memorandum with a bank?

4 MR. HECKER: Objection;
5 foundation.

6 A. I don't know.

7 Q. Did you ever share it with the bank?

8 A. I don't recall ever sharing it with a
9 bank.

10 (Whereupon, exhibit is presented
11 and marked SEC Zagone Exhibit RZ-36 for
12 identification.)

13 MR. HANAUER: I've tendered the
14 witness --

15 MR. HECKER: Sorry, just give me
16 one second. The documents are not
17 sequentially numbered. Is that intended?
18 I want to make sure. It goes from 728 to
19 393.

20 MR. HANAUER: Can we go off the
21 record?

22 THE VIDEOGRAPHER: Going off the
23 record at 2:11.

24 (Pause)

25 THE VIDEOGRAPHER: We are back on

1 the record, 2:12.

2 BY MR. HANAUER:

3 Q. So is Exhibit 36, RZ-36, an e-mail you
4 and others received from [REDACTED] on May 12th,
5 2018?

6 A. Yes, that's correct.

7 Q. And who is Ms. [REDACTED]?

8 A. Ms. [REDACTED] worked in the communications
9 team.

10 Q. Was she part of the marcomm team?

11 A. Exactly.

12 Q. And do you see she's writing about
13 Blockchain Week New York City?

14 A. Yes.

15 Q. What was Blockchain Week New York City?

16 A. Blockchain Week New York City was an
17 event that spanned a week based here in New York
18 where there were events around blockchain and
19 crypto that Ripple participated in.

20 Q. Who were the -- some of the types of
21 people that attended the event?

22 A. What time was this? This was 2018.

23 From what I recall, these types of events -- I
24 don't recall this one specifically, but Blockchain
25 Week New York typically skews more towards the

1 bank crowds and banks' consultants, developers
2 building on blockchain and crypto technology.

3 Q. Did members of the press attend these
4 events?

5 A. Sometimes they did, yes.

6 Q. Did regulators attend events like this?

7 A. Potentially, yes. I can't recall for
8 this specific one if there were or not. For --
9 for many of these types of conferences or events,
10 they were open to regulators.

11 Q. So do you see how in Ms. [REDACTED] e-mail,
12 she says "In case you missed our kickoff, remember
13 we have three goals in mind for events this week."

14 Did you attend the kickoff that she was
15 referring to?

16 A. I don't believe I did, no.

17 Q. And do you see the first bullet point or
18 the first goal Ms. [REDACTED] references is to "Further
19 clarify the distinction between Ripple and XRP"?

20 A. Yes, I see that.

21 Q. And why was -- what is your
22 understanding of why that was a goal of Ripple?

23 A. To ensure that -- to ensure more
24 accuracy in the market. What I recall seeing at
25 this time were either press reports or, more

1 broadly, it was like commentators on Twitter.
2 Crypto Twitter was kind of a growing thing that
3 were incorrectly talking around the technology.
4 It was Ripple, but also some other assets, too.
5 So there was an effort across the industry to
6 better inform people on the assets and how they
7 worked, including what Ripple was doing here.

8 Q. So why was it important to Ripple that
9 the distinction between Ripple and XRP be
10 clarified?

11 MR. HECKER: Objection to form.

12 You can answer.

13 A. It was important for us to clarify
14 Ripple and XRP so people had an accurate
15 understanding. So they knew -- they knew Ripple
16 and our products and they -- there was a
17 differentiation between XRP, that open-source
18 platform. Particularly at a time when there was
19 other development happening on XRP and other
20 platforms. A variety of use cases starting to
21 form in 2018, starting to see the industry expand.

22 Q. Did it relate to the security
23 classification issue?

24 A. From what I recall from this, it's more
25 about just being accurate, ensuring that the

1 market understood XRP versus Ripple.

2 Q. Was there a market perception that XRP
3 and Ripple were synonymous?

4 MR. HECKER: Objection to form.

5 A. I think back in that day, I did feel
6 that there was confusion in the market on Ripple
7 versus XRP and the difference between the two.

8 Q. And what was your understanding of how
9 that impacted the classification issue?

10 MR. HECKER: Objection.

11 Q. Security classification issue.

12 MR. CERESNEY: Same objection.

13 You'd have to exclude from your
14 understanding information you got from
15 counsel.

16 A. My approach to this, and even raising it
17 previously, it was more around ensuring that the
18 market accurately understood our products. I
19 didn't -- I felt the need to ensure people knew
20 who we were, Ripple, we're a software company,
21 versus XRP, the technology we use in our product.
22 It was just like ensuring that they accurately
23 understood what -- what they were talking about.

24 I -- I grew concerned and -- and
25 frustrated when there was just incorrect press

1 reports conflating XRP and Ripple that hindered
2 our ability to sell to banks. They just didn't
3 understand what we were doing.

4 Q. I guess why did that -- why did that
5 make a difference?

6 MR. WARD: Objection to form.

7 A. Our goal was to build a payment network.
8 And if a bank couldn't understand what we were
9 doing or how the product worked, that wouldn't
10 enable sales or new partners.

11 Q. And -- and I see where you're coming
12 from there, but I guess in -- in explaining to a
13 bank how xRapid worked or xCurrent worked, why is
14 it important for the bank to know that Ripple is
15 different than XRP?

16 MR. HECKER: Objection to form.

17 MR. WARD: Objection.

18 MR. CERESNEY: Asked and answered
19 a few times.

20 THE WITNESS: Answer?

21 MR. HECKER: You can answer.

22 A. Going through a vendor due diligence
23 review with a bank, they wanted to know exactly
24 what they're working with, how that technology
25 works, what their risks are, particularly around

1 operational resiliency and cyber security. XRP is
2 one piece of the product. They want to -- that's
3 a key part of that discussion.

4 So this is all -- my work here and the
5 approach here was all around ensuring the bank and
6 the market had an accurate understanding of this
7 technology.

8 Q. And then I want to -- do you see how at
9 the bottom of the first page of Ms. [REDACTED]
10 e-mail, there's a section called "Important
11 Reminders"?

12 A. I see that.

13 Q. Then if can you flip to the second page,
14 please.

15 You see how Ms. [REDACTED] is asking the
16 e-mail recipients to study key messages to Fast
17 Facts and FAQs?

18 A. Yes, I see that.

19 Q. And there's a link to a document?

20 A. I see that.

21 Q. And then on the page beginning -- or
22 with the Bates number ending in 5393.

23 A. Yep.

24 Q. Is that the key messages, FAQs and Fast
25 Facts that Ms. [REDACTED] is referring to?

1 A. It appears so, yes.

2 MR. HECKER: Objection.

3 MR. WARD: Objection.

4 MR. CERESNEY: Just for the
5 record, Ben, we produced this document
6 from Google Docs. I can't necessarily
7 represent that it was the exact version
8 that was linked. We think it's the
9 document, but it could be -- I mean, it
10 says updated May 8th, so, yeah, it's the
11 right time frame, but we can't represent
12 it's exactly that version.

13 MR. HANAUER: Okay.

14 BY MR. HANAUER:

15 Q. To the best of your understanding,
16 the -- the key messages, FAQ and Fast Facts
17 document is the one that was linked to Ms. [REDACTED]
18 e-mail?

19 A. The titles are the same from the
20 documents in the link, so it looks like it's the
21 same.

22 Q. Who prepared the key messages, FAQs and
23 Fast Facts documents?

24 A. This looks like it was prepared by our
25 marketing team. The marketing team served as

1 the -- they synthesized news across the
2 organization.

3 Q. And the key messages, FAQ, Fast Fact
4 document, that contains the messaging that Ripple
5 wanted to convey to the attendees at Blockchain
6 Week?

7 A. That's what it appears from the e-mail.

8 Q. And do you see the section that says
9 "What are your products"?

10 A. Yes, I see that.

11 Q. And it lists xCurrent, xRapid and xVia?

12 A. Uh-huh.

13 Q. So of those three products, was xRapid
14 the only one that used XRP?

15 A. I believe so. I forgot about xVia until
16 seeing this. But xRapid was the one that was
17 predominantly focused on XRP.

18 Q. How did xVia use XRP?

19 A. I forgot about xVia until I had saw this
20 just now. So I don't know if it did or not. I
21 know xRapid was the one predominantly focused on
22 XRP.

23 Q. And then do you see how the second
24 bullet point under xRapid, it says "Pilot tests
25 are ongoing with [REDACTED] MoneyGram" and

1 some other companies?

2 A. Yes, I see that.

3 Q. In May 2018 had Ripple deployed xRapid
4 for commercial use or was it still in pilot
5 testing phase?

6 MR. HECKER: Objection to form.

7 A. This doc says they're in pilot testing
8 as of May 2018.

9 Q. And then can you go to page 5395? You
10 see the section that says "Who Uses XRP Today?"

11 A. Yes, I see that.

12 Q. And the first bullet point says "Several
13 financial institutions are piloting XRP as a
14 liquidity solution"?

15 A. Yes, I see that.

16 Q. That refers to xRapid?

17 A. Yes.

18 Q. And then in parentheses, it says
19 "(important to note: The product is still in
20 beta)"?

21 A. Yes.

22 Q. What did that mean, that xRapid was
23 "still in beta"?

24 A. Beta is a version of the software that
25 you use for testing and piloting before a full

1 launch. So this is -- in our evolution of the
2 product, beta would be sort of like final test
3 version before the alpha version, which alpha is
4 full launch.

5 Q. And do you see on the page before that
6 at the bottom, the question -- or the section "How
7 Does Ripple Make Money?"

8 A. Uh-huh.

9 Q. And there are two bullet points. One
10 talks about software sales and one talks about XRP
11 sales?

12 A. Yes.

13 Q. In May 2018 did Ripple generate revenues
14 other than by selling software and selling XRP?

15 A. Other than by selling software and XRP?
16 Not that I'm aware of.

17 Q. In May '18, May 2018, were Ripple's
18 software sales revenues sufficient to pay for its
19 expenses and operating costs?

20 MR. WARD: Objection to form.

21 A. I don't have any certain information on
22 that to be able to say yes or no.

23 Q. How did Ripple's software sales revenues
24 compare to its XRP sales revenues in May 2018?

25 MR. HECKER: Objection;

1 foundation, asked and answered.

2 A. I don't know what the software sales
3 number totaled to be able to make a comparison.

4 Q. Do you have any general understanding?

5 MR. HECKER: Same objections.

6 A. I don't know what the software and sales
7 revenue was.

8 Q. Can you go to page 5398, please? Do you
9 see the section that says "SEC/Security
10 Conversation"?

11 A. Yes, I do.

12 Q. And then there's some -- some bullet
13 points under that?

14 A. Yes, I see that.

15 Q. Why was it important for Ripple to
16 include this SEC/security conversation section in
17 its briefing materials for Blockchain Week NYC?

18 MR. HECKER: Objection;
19 foundation.

20 A. Given the media reports that we saw
21 circulating at the time, some we -- we previously
22 saw, people were asking the company about it.
23 This is going to be a public -- public conference
24 that employees are attending. So we put -- the
25 marketing team insert a section here to give the

1 employees attending the event some guidance on how
2 to respond to that accurately.

3 Q. Respond to the issue about whether the
4 XRP is a security?

5 A. To respond to questions that someone
6 might ask about X -- XRP's classification.

7 Q. And do you see that the first bullet
8 point in that section says "Ultimately, this will
9 be up to the SEC to decide"?

10 A. Yes, I see it.

11 Q. And that's the message Ripple wanted to
12 give to market participants?

13 A. That -- that's the first talking point
14 here.

15 Q. And Ripple understood that the SEC could
16 ultimately determine that it did consider XRP to
17 be a security?

18 MR. HECKER: Objection;
19 foundation.

20 A. I can't speak for what marketing or --
21 or legal or whoever wrote this ultimately
22 understood. Here we're saying it's up to the SEC
23 to decide. They're the regulator.

24 Q. And you shared that understanding,
25 right?

1 MR. HECKER: Same objections.

2 A. I was following the guidance that was
3 received in the document. I'm -- I'm not a
4 securities expert, so I followed legal's advice.

5 Q. Well, this document is not from legal,
6 correct? It's from marketing?

7 A. Yes, from my understanding. So my
8 understanding was informed by legal, that they got
9 it from legal.

10 Q. And do you see the second bullet point
11 where it says "It's making headlines in recent
12 weeks, but it's not a new question"?

13 A. Yes, I see that.

14 Q. What's your understanding of what Ripple
15 marketing was trying to convey there?

16 A. It looks like "it's" is referring to the
17 classification of XRP.

18 Q. In May 2018 were you aware that
19 Ripple -- or let me start over.

20 In May of 2018, were you aware that the
21 SEC's enforcement division had begun an
22 investigation into Ripple?

23 MR. CERESNEY: Objection; form.

24 A. I became aware that the SEC engaged
25 Ripple at the time that I got --

1 MR. CERESNEY: Actually, hold on
2 a second. Are you aware of this
3 information other than through discussions
4 with counsel?

5 THE WITNESS: No.

6 MR. TENREIRO: Andrew, can I just
7 clarify something on the record because
8 this has come up twice today. So are you
9 going to instruct him not to answer if
10 counsel just relayed information, for
11 example, "the SEC said to me," and pass
12 that along? Is that -- that the
13 instruction?

14 MR. CERESNEY: I'm going to
15 instruct him not to answer on discussions
16 with counsel. That's what I'm instructing
17 him on.

18 MR. TENREIRO: Okay. Including
19 if it's just passing on information?

20 MR. CERESNEY: I'm not going
21 to -- I'm going to instruct him not to
22 convey discussions with counsel.

23 MR. TENREIRO: Okay. Thank you.

24 A. I got that notification from counsel, so
25 that's...

1 MR. HANAUER: And I'm not trying
2 to get into substance here.

3 Q. At some point couns -- Ripple's counsel
4 advised you there was an SEC investigation into
5 Ripple?

6 A. At some point, yes.

7 Q. When did you first learn that?

8 A. I learned that when I received a
9 document hold request, a document hold order.

10 Q. Do you have any approximation of when
11 that occurred?

12 A. I believe that was in 2018.

13 Q. Did you have any responsibilities
14 related to the SEC investigation?

15 A. No.

16 Q. And once you became aware that the SEC's
17 enforcement division was investigating Ripple in
18 2018, were you aware that that investigation could
19 ultimately result in an enforcement action against
20 Ripple?

21 MR. CERESNEY: Yeah, I'm going to
22 instruct the witness to only answer that
23 question with information he received from
24 somebody other than counsel.

25 A. I have no other information.

1 Q. Just taking a step back from this case,
2 this -- this lawsuit, this investigation --

3 A. Uh-huh.

4 Q. -- are you aware that the SEC's
5 enforcement division conducts nonpublic
6 investigations?

7 A. Yes.

8 MR. CERESNEY: Objection.

9 A. I did know.

10 Q. And are you aware that at the
11 conclusions of those investigations, the SEC's
12 enforcement division can recommend to the SEC to
13 take enforcement action?

14 A. Generally speaking, yes.

15 Q. Beyond your conversations with counsel,
16 who else -- beyond things you learned from your
17 counsel, who else at Ripple was aware of the SEC
18 investigation?

19 A. Oh, I -- you would have to ask our legal
20 team. They were notified.

21 Q. Did you --

22 A. I don't know.

23 Q. Did you ever talk about the
24 investigation with any other Ripple employees?

25 A. I didn't -- I didn't ask who they were

1 informing about the case.

2 Q. Different question.

3 Did you ever discuss the fact that there
4 was an SEC investigation with other Ripple
5 employees?

6 A. Yes.

7 Q. Who?

8 A. Primarily legal. I was reporting in to
9 legal in this time. So that was my team.

10 Q. What do you mean, you were reporting in
11 to legal?

12 A. The org structure, at this point I had
13 moved from reporting to Antoinette to reporting to
14 the general counsel.

15 Q. What -- when did that take place?

16 A. After Antoinette left.

17 Q. And when did she leave?

18 A. I believe she left in 2018.

19 Q. Did you ever discuss the investigation
20 with -- the SEC's investigation with
21 Mr. Garlinghouse?

22 A. Not the investigation specifically, no.

23 Q. Did you ever discuss the SEC's
24 investigation with Mr. Larsen?

25 A. No.

1 Q. And going back to Exhibit 36, that same
2 page we were looking at, 5398 (sic), do you see
3 the bullet point, "Is Ripple buying XRP's way onto
4 exchanges?

5 A. Yes, I see that point.

6 Q. And what's your understanding of what
7 that talking point is about?

8 A. There was talk in the general market
9 about ICOs and coins paying exchanges to list
10 them. And so this is a question targeted or
11 aiming at Ripple saying did Ripple buy XRP's way
12 onto an exchange.

13 Q. And did Ripple pay exchanges to list
14 XRP?

15 A. Not that I'm aware of, no.

16 Q. Is there a bullet point here that says
17 Ripple is not paying exchanges to list XRP?

18 A. There's not a bullet in this document at
19 this time, no.

20 Q. Did Ripple provide incentives to ex --
21 to exchanges to list X -- to list XRP?

22 MR. HECKER: Objection to form;
23 foundation.

24 A. I don't know.

25 MR. HANAUER: We've been going

1 about an hour. Do you mind taking a
2 five-minute break?

3 THE WITNESS: Sure.

4 THE VIDEOGRAPHER: Going off the
5 record at 2:37.

6 (Whereupon, a recess is taken.)

7 THE VIDEOGRAPHER: Okay. Back on
8 the record at 2:49.

9 BY MR. HANAUER:

10 Q. So, Mr. Zagone, before we went off the
11 record, do you remember us talking about in the --
12 the talking points you and other Ripple employees
13 got in -- in advance of the Blockchain Week New
14 York?

15 A. I do.

16 Q. And do you remember we were talking
17 about one of the talking points was on the SEC
18 security classification issue, the bullet point
19 was "Ultimately, it would be up to the SEC to
20 decide"?

21 A. I do.

22 Q. Did you ever convey that message when
23 you were speaking publicly about Ripple or XR --
24 XRP?

25 A. I could have, yes. It's possible that I

1 did.

2 Q. How often did you convey that message?

3 MR. WARD: Objection.

4 A. I -- I spoke publicly maybe 20 times a
5 year, 20, 30 times a year, using our company
6 talking points, so that it's possible that I used
7 that talking point in a public speech.

8 Q. How often did -- when you were speaking
9 publicly about Ripple and XRP did the SEC
10 securities classification issue come up?

11 A. It was not a frequent question I was
12 asked on my panels, given the focus of my panels
13 were typically around payment infrastructure. So
14 much more around payment focus.

15 So it wouldn't -- wasn't frequently. If
16 it came up, I would be discussing Ripple's view,
17 to be held by Ripple that it was not a security.

18 Q. And you also conveyed the message that
19 ultimately it would be up to the SEC to decide?

20 MR. WARD: Objection.

21 A. I could have given it's in our -- it was
22 in our talking point guide here.

23 Q. So did you -- the -- the talking points
24 that were sent in advance of the Blockchain New
25 York event in May of 2018 --

1 A. Uh-huh.

2 Q. -- did you use those talking points or
3 study them in advance of your public speaking
4 about Ripple or XRP?

5 MR. HECKER: Objection to form.

6 A. I didn't speak at this event, I don't
7 recall. I don't believe I spoke at this event. I
8 was just attending. So I -- I would -- I would
9 have reviewed these talking points ahead of
10 attending the event.

11 Q. And I guess my question is beyond the
12 Blockchain New York City -- Blockchain Week New
13 York City --

14 A. Uh-huh.

15 Q. -- did you consult these talking points
16 in advance of your other public speaking
17 engagements?

18 MR. HECKER: And -- and just so
19 the record's clear, do you mean this May
20 '18 version of the document?

21 MR. HANAUER: Correct.

22 A. I don't know if I referenced this
23 document in -- outside of this Blockchain Week.

24 Q. Did you have a -- like a standard or a
25 form talking points that you used before your

1 speaking engagements?

2 A. Before a speaking engagement, our
3 marcomm team would provide, like, a backgrounder
4 on the event. It generally had FAQs similar to
5 this, context on the event and who the other
6 panelists were.

7 Q. And the talking points you would receive
8 by marcomm in advance of your public speaking
9 events, did those talking points also include a
10 section about the SEC security classification
11 issue?

12 A. It -- it would have depended if we
13 expected that topic to come up or not.

14 Q. And I take it that if Ripple expected
15 the securities classification issue to come up,
16 your talking points would include a section
17 similar to what was in the -- the May Blockchain
18 Week talking points?

19 MR. HECKER: Objection to form.

20 A. It would have been a -- if we expected
21 the topic to come up, there would have been a
22 section on talking points around it. To the
23 degree they matched these talking points or not, I
24 don't know. It depended on the time.

25 Q. Were they often similar?

1 MR. CERESNEY: Objection; form.

2 A. They were often similar.

3 (Whereupon, exhibit is presented
4 and marked SEC Zagone Exhibit RZ-37 for
5 identification.)

6 MR. HANAUER: I'm tendering the
7 witness a document that's been labeled
8 Exhibit RZ-37, beginning with the Bates
9 number ending 5781.

10 BY MR. HANAUER:

11 Q. And is Exhibit 37 a copy of an e-mail
12 you received from [REDACTED] on June 5th,
13 2018?

14 A. That's correct, yes.

15 Q. And Ms. [REDACTED] she worked at [REDACTED]
16 [REDACTED]

17 A. Yes. That's right.

18 Q. And do you see the subject line, "Ripple
19 media tracking" and then there's the date?

20 A. Yes.

21 Q. Did [REDACTED] frequently provide
22 media-tracking e-mails to Ripple personnel?

23 A. Generally every morning we would receive
24 one.

25 Q. And who besides you at Ripple would --

1 did you understand received these media-tracking
2 e-mails from [REDACTED]

3 A. I understood that the public
4 spokespeople received these e-mails and that if
5 you -- if you wanted to receive it, you could
6 request it. It was more open than just the
7 spokespeople.

8 THE REPORTER: Repeat that. I'm
9 sorry.

10 A. It was more open than just the
11 spokespeople.

12 Q. Do you have an understanding whether
13 Mr. Garlinghouse received the media-tracking
14 e-mails from [REDACTED]

15 MR. HECKER: Objection.

16 A. I don't know.

17 Q. Did you consider him a public
18 spokesperson for Ripple?

19 A. Yes.

20 Q. And do you see the first paragraph of
21 Ms. [REDACTED] e-mail? She writes "Additionally,
22 the SEC appointed a senior advisor for digital
23 assets and innovation in an effort to better
24 regulate the market?

25 A. Yes, I see that.

1 Q. And do you see on the page ending in
2 783, after the heading "Crypto Chief"?

3 A. Yes, I see it.

4 Q. And -- and there's a -- a paragraph
5 about Valerie Szczepanik?

6 A. Yes.

7 Q. And did you have any interactions with
8 Ms. Szczepanik?

9 A. No.

10 Q. What was your understanding of her
11 position at the SEC?

12 A. That she would be leading an effort to
13 explore digital assets within the SEC.

14 Q. Are you aware of anyone with Ripple ever
15 communicating with Ms. Szczepanik?

16 A. I believe people from Ripple spoke with
17 Ms. Szczepanik, yes.

18 Q. And who was that?

19 A. I imagine now that I can -- our legal
20 team would have. It's my understanding our legal
21 team.

22 Q. Anyone else?

23 A. Not that I know for certain.

24 Q. And whoever at Ripple communicated with
25 Ms. Szczepanik, did they ever -- are you aware of

1 them ever asking her whether the SEC considered
2 XRP a security?

3 MR. CERESNEY: Let me just
4 instruct you not to discuss discussions
5 you may have had with counsel.

6 A. I would have only learned that through
7 counsel.

8 Q. Did Ripple have the opportunity, if it
9 wanted to, to ask Ms. Szczepanik whether the SEC
10 considered XRP to be a security?

11 MR. WARD: Objection.

12 MR. CERESNEY: Same -- same
13 instruction. If you -- if you know about
14 what happened in the meetings with
15 counsel, same instructions.

16 A. Yeah, I don't know.

17 Q. And then can I ask you to take a look at
18 the first page of Exhibit 37?

19 A. Uh-huh.

20 Q. Do you see the heading "Ripple
21 Representatives"?

22 A. Yes.

23 Q. And then there's a reference to a class
24 action lawsuit?

25 A. Yes, I see that.

1 Q. When was Ripple first sued for allegedly
2 violating the federal securities laws?

3 MR. WARD: Objection.

4 A. Just looking at the date of this e-mail
5 and who's representing us, I conclude it was in
6 2018.

7 Q. And did you have an understanding of how
8 the result in that lawsuit could impact the SEC
9 securities classification issue?

10 MR. HECKER: Objection;

11 foundation and same instruction about your
12 understanding about the legal consequences
13 of the civil litigation or the SEC
14 investigation.

15 A. I didn't. At this point, my role was
16 focused on xRapid and our bank clients. This --
17 these are issues handled by our legal team.

18 Q. Did you have any involvement in the
19 private class action litigation?

20 A. No.

21 (Whereupon, exhibit is presented
22 and marked SEC Zagone Exhibit RZ-38 for
23 identification.)

24 MR. HANAUER: I just tendered the
25 witness a document labeled as Exhibit

1 RZ-38, beginning with a Bates number
2 ending in 5756.

3 Excuse me.

4 BY MR. HANAUER:

5 Q. And is Exhibit 38 a copy of an e-mail
6 you received from Ms. [REDACTED] on June 8th, 2018?

7 A. Yes, it is.

8 Q. And do you see Ms. [REDACTED] is advising
9 Ripple that it faces a second lawsuit regarding
10 XRP?

11 A. Something you said?

12 THE WITNESS: Are we okay to go?

13 MR. HECKER: Yeah, go ahead.

14 THE WITNESS: Okay.

15 A. I see [REDACTED] sharing a news clipping
16 about another lawsuit that was filed against XR --
17 against Ripple.

18 Q. And do you see in that same paragraph,
19 Ms. [REDACTED] writes "Widespread doubt surrounding
20 cryptocurrency regulation has hindered trading, as
21 lawmakers prepare to crack down on the space"?

22 A. I see that.

23 Q. Was Ripple expecting a crackdown in the
24 digital asset space by the SEC in June 2018?

25 MR. WARD: Objection to form.

1 A. Can you repeat the question, please?

2 Q. Yeah.

3 In June 2018 was Ripple expecting or
4 anticipating a crackdown in the digital asset
5 space by the SEC?

6 MR. WARD: Same objection.

7 A. I wouldn't have used the term
8 "crackdown" in the space. There was uncertainty
9 in the market on what the regulatory framework for
10 digital assets was in the U.S. There was --
11 especially compared to other countries. Other
12 countries had explicitly named the classification
13 and the assets that fell into each. We -- we
14 hadn't seen that done yet in the U.S.

15 So at this point, in the U.S., companies
16 were coming to their own opinion, but it wasn't
17 opinions that were from a regulatory agency that
18 we saw happening in other -- other countries.

19 Q. So in other countries outside the United
20 States, regulators were stating that XRP was not a
21 security in their jurisdictions?

22 A. That's correct, yes.

23 Q. Did any regulators ever state that in
24 the United States as it related to XRP?

25 A. XRP was given a classification in some

1 cases on what it was -- what it was viewed by
2 different regulators. The FinCEN settlement
3 referring to it as currency, though we had not
4 seen explicit guidance from the SEC.

5 Q. And did the FinCEN settlement mention
6 the SEC?

7 A. I don't recall.

8 Q. Was the SEC a party to the FinCEN
9 settlement?

10 A. It was not part of the FinCEN
11 settlement.

12 Q. Did you have an understanding of whether
13 SEC public statements were reducing trading
14 volumes in XRP?

15 A. I didn't have an understanding to be
16 able to say if that was accurate or not.

17 MR. HANAUER: Thirty-nine.

18 (Whereupon, exhibit is presented
19 and marked SEC Zagone Exhibit RZ-39 for
20 identification.)

21 MR. HANAUER: So I'm tendering
22 the witness a document labeled Exhibit
23 RZ-39, beginning with a Bates number
24 ending in 9079 (sic).

25 BY MR. HANAUER:

1 Q. And is Exhibit RZ-39 a copy of an e-mail
2 chain ending with an e-mail from [REDACTED] to
3 you on June 13th, 2018?

4 A. That's correct, yes.

5 Q. Who is Mr. [REDACTED]

6 A. [REDACTED] was head of our public
7 relations team.

8 Q. And can I refer you to the second page
9 of Exhibit 39, a June 13th, 2018 e-mail from [REDACTED]
10 [REDACTED]

11 A. Okay.

12 Q. I hope -- I hope I'm saying her name
13 right. But who is Ms. or Mr. [REDACTED]

14 A. Ms. [REDACTED] was our delegate to manage
15 our work with our Japanese joint venture.

16 Q. And do you see how she's writing about
17 an individual named [REDACTED]?

18 A. Yes.

19 Q. Who is [REDACTED]

20 A. [REDACTED] is [REDACTED] he worked for
21 me. He was head of our regulatory relations in
22 Asia-Pacific.

23 Q. He reported to you?

24 A. That's correct.

25 Q. And it looks like he was speaking on a

1 panel in Japan?

2 A. Give me a second to -- to review.

3 (Pause)

4 A. Okay.

5 Q. So is [REDACTED] -- am I saying that right,

6 [REDACTED]
7 A. [REDACTED] (pronunciation).

8 Q. [REDACTED]

9 [REDACTED] was going to be calling in to a --
10 a meeting with Japan's -- what's FSA?

11 A. FSA is the regulator in -- the financial
12 services regulator in Japan.

13 Q. And it looks like the FSA was going to
14 be having a meeting in June 2018?

15 A. They held a conference on crypto assets.

16 Q. And [REDACTED] was going to be calling in to
17 that meeting to speak on Ripple's behalf?

18 A. Correct.

19 Q. And why was he speaking on that panel?

20 A. I can't recall why. I assume we had
21 been invited to speak and he took it.

22 Q. And Ms. [REDACTED] is advising --
23 advising you and [REDACTED] that Gary Gensler was going
24 to be speaking on the panel?

25 A. That's correct, yes.

1 Q. And at the time, Mr. Gensler was a
2 professor at MIT that studied digital assets?

3 A. That's correct.

4 Q. And this is the same Gary Gensler that's
5 currently the chairman of the SEC?

6 A. That's correct.

7 Q. And Ms. [REDACTED] is advising you and
8 Sagar that Mr. Gensler could be speaking about XRP
9 and Ripple?

10 A. That's correct.

11 Q. And Ms. [REDACTED] is actually sharing
12 with you and [REDACTED] a slide she understands
13 Mr. Gensler would present at the meeting?

14 A. That's right.

15 Q. And it was -- did you understand in June
16 2018 that Mr. Gensler had voiced his opinion that
17 XRP was a security subject to SEC regulation?

18 A. Yes, I had seen Gensler speak publicly
19 before on that view.

20 Q. And you heard him state his belief that
21 XRP was a security?

22 A. I read an article that he was quoted in
23 citing that when he joined MIT Media Labs.

24 Q. Have you ever attended any presentations
25 by Mr. -- where Mr. Gensler spoke?

1 A. I don't believe so.

2 Q. So on the second page of Exhibit 39, you
3 write "[REDACTED]" and I prepped today in anticipation
4 of Gensler being anti-Ripple?"

5 A. Uh-huh. Yes.

6 Q. So you helped [REDACTED] prepare to address
7 any statements Mr. Gensler would make about XRP
8 being a security?

9 A. I prepped [REDACTED] on correcting points
10 that we had seen Mr. Gensler use before that we
11 felt were inaccurate.

12 Q. What did you tell [REDACTED]

13 A. I can't recall specifics aside from
14 noting that we knew Gary was, in this language
15 here, "anti-Ripple." We had seen an article that
16 he -- that he was featured in when he joined MIT
17 Media Labs that was critical of Ripple.

18 So we knew the tone -- my -- my prep
19 with [REDACTED] was the tone of this is going to be
20 unfriendly to the Ripple position. That's context
21 to help him prep so he's not blindsided by it.

22 Q. And did you give him talking points
23 similar to the ones you -- you received in advance
24 of speaking engagements?

25 MR. HECKER: Objection to form.

1 A. No, I didn't. That's why on -- on this
2 e-mail, I ask the marcomm team to share those
3 points with [REDACTED]

4 Q. And then further up in the -- the e-mail
5 chain, or actually the first e-mail in the -- or
6 the top e-mail in Exhibit 39, Mr. [REDACTED]
7 actually does e-mail talking points to [REDACTED]

8 A. Yes.

9 Q. And these talking points are similar to
10 the ones that were sent out in advance of the
11 Blockchain New York Week meeting in May 2018?

12 MR. HECKER: Objection to form.

13 A. They look similar.

14 Q. And for the SEC classification issue,
15 the first bullet point that was sent to Sagar was
16 "Ultimately, this will be up to the SEC to
17 decide"?

18 A. That's correct.

19 Q. And that was messaging that you wanted
20 Sagar to convey at the conference?

21 MR. HECKER: Objection to form.

22 A. That's messaging that our marketing team
23 provided to [REDACTED]

24 Q. And did you agree with that messaging?

25 A. I was relying on the messaging from our

1 company.

2 Q. What's the Fortune article referenced in
3 Exhibit 39?

4 A. Could you point me to where that is?

5 Q. Yeah. So it's actually in --

6 A. Oh, I see the top one.

7 Q. -- in two places. It first appeared --
8 I first see it on the second page where you're
9 actually writing about prepping [REDACTED] on how best
10 to address Mr. Gensler and the Fortune article.

11 A. I -- I can't recall. That might be the
12 article that Gary Gensler is featured in about
13 joining the MIT Media Lab where he was negative
14 about Ripple.

15 I also see "Fortune" at the top of the
16 chain here.

17 MR. HANAUER: Forty.

18 (Whereupon, exhibit is presented
19 and marked SEC Zagone Exhibit RZ-40 for
20 identification.)

21 MR. HANAUER: I'm tendering the
22 witness a document that's been labeled
23 Exhibit RZ-40 beginning with a Bates
24 number ending in 7079.

25 BY MR. HANAUER:

1 Q. Is Exhibit RZ-40 a copy of an e-mail
2 chain ending in an e-mail Monica Long sent to
3 [REDACTED] copying you and others, dated June 16th,
4 2018? Actually, strike that.

5 Exhibit RZ-40, that's a copy of an
6 e-mail [REDACTED] sent to Ms. Long, copying you and
7 others, dated June 16th, 2018?

8 A. Yes, that's correct.

9 Q. And first I just want to ask you about
10 the second e-mail in the chain on Exhibit 40.

11 A. Uh-huh.

12 Q. And that's Ms. Long providing additional
13 talking points that [REDACTED] should use going into
14 the Japan panel that [REDACTED] was speaking on?

15 A. Give me one moment.

16 (Pause)

17 A. Okay. Could you repeat the question,
18 please?

19 Q. So for the second e-mail in the chain on
20 Exhibit RZ-40, Ms. Long is providing [REDACTED]
21 additional talking points that he should use at
22 the Japanese regulatory presentation where [REDACTED]
23 and Mr. Gensler would be speaking.

24 A. That looks like it, yes.

25 Q. And then the top e-mail on Exhibit 40,

1 Sagar is actually briefing other folks at Ripple
2 about the Japanese regulatory panel presentation
3 he did with Mr. Gensler?

4 A. That's correct.

5 Q. And [REDACTED] wrote that on that -- at that
6 panel, Mr. Gensler expressed his belief that XRP
7 was a security?

8 A. Yes. He expressed -- Mr. Gensler
9 expressed a view that XRP and Ether were
10 securities.

11 THE REPORTER: That XRP? I can't
12 hear you.

13 A. And Ether were securities.

14 Q. And where does [REDACTED] write that
15 Mr. Gensler spoke about Ether being a security?

16 A. Mr. Gensler had previously made a public
17 view that XRP and Ether were a security before
18 this conference. [REDACTED] here notes that [REDACTED]
19 reminded the audience that Mr. Gensler's initial
20 view of Ether had since been proven wrong by the
21 SEC.

22 Q. So did [REDACTED] write anywhere that at the
23 presentation, Mr. Gensler said Ether was a
24 security?

25 A. He doesn't write that here, but

1 Mr. Gensler had been public about that before the
2 speech.

3 Q. Okay. And [REDACTED] wrote that after
4 Mr. Gensler talked, [REDACTED] conveyed to the Japanese
5 regulatory panel that only the SEC could decide
6 whether XRP was a security?

7 A. [REDACTED] e-mail says that he rebutted
8 Gensler's view and stressed that only the U.S. SEC
9 could decide whether XRP or any other digital
10 asset was a security.

11 Q. And that was a talking point that Ripple
12 wanted its public spokespeople to convey?

13 A. That was a talking point from the
14 communications guide.

15 MR. HANAUER: Forty-one.

16 (Whereupon, exhibit is presented
17 and marked SEC Zagone Exhibit RZ-41 for
18 identification.)

19 MR. HANAUER: So I tendered the
20 witness a document labeled Exhibit RZ-41,
21 which begins with a Bates number ending in
22 3272.

23 BY MR. HANAUER:

24 Q. Is Exhibit RZ-41 a copy of an e-mail
25 chain ending with an e-mail Mr. [REDACTED] sent to you on

1 October 17th, 2018?

2 A. That's correct, yes. 2018.

3 Q. 2018.

4 A. Uh-huh.

5 Q. Thank you.

6 And the second e-mail in Exhibit -- from
7 the top in Exhibit RZ-41 is an e-mail that you
8 wrote to Mr. [REDACTED] on October 16th of 2018?

9 A. Yep.

10 Q. And Mr. [REDACTED] was going to be having
11 breakfast the next day with the new head of
12 Britain's Financial Conduct Authority?

13 A. That's correct.

14 Q. And you were trying to provide Mr. [REDACTED]
15 with some information he should know in advance of
16 that meeting?

17 A. That's right.

18 Q. And I want to refer you on the second
19 page of Exhibit 41, the last bullet point. You
20 start by talking about the security classification
21 issue in the United Kingdom?

22 A. Yes.

23 Q. And then at the end you write "In the
24 U.S., the rules require interpretation, so there's
25 uncertainty on the treatment today"?

1 A. Yes.

2 Q. What were you referring to there?

3 A. In the UK, the UK regulator, the FCA,
4 had specifically said XRP is not a security by
5 their definition of a security. The U.S.
6 regulators, the SEC, had not made an explicit
7 statement. So I was saying that there's some
8 interpretation that's needed. The companies
9 themselves would have to figure out if a digital
10 asset was a security or not since it's not
11 explicit to them.

12 Q. And as of October 2018, had the SEC made
13 any statements about XRP?

14 A. Not that I'm aware.

15 Q. Did Ripple take any steps to obtain
16 clarity from the SEC on the issue of XRP's
17 classification as a security?

18 MR. WARD: Objection.

19 MR. CERESNEY: Objection. Both
20 asked and answered and I think to the
21 extent he has any information about that
22 topic, it would come from counsel.

23 A. I have nothing further to add.

24 Q. So independent of what you -- your
25 communications with counsel, do you have any

1 understanding of whether -- what Ripple did to
2 obtain clarity from the SEC on the issue of XRP
3 classifications?

4 MR. HECKER: Same objection.

5 A. That topic was owned by the legal team,
6 not me.

7 MR. HANAUER: Exhibit 42.

8 (Whereupon, exhibit is presented
9 and marked SEC Zagone Exhibit RZ-42 for
10 identification.)

11 MR. HANAUER: I tendered the
12 witness a document labeled as Exhibit
13 RZ-42, which begins with a Bates number
14 ending in 5225.

15 BY MR. HANAUER:

16 Q. And is Exhibit RZ-42 a copy of an e-mail
17 chain ending with an e-mail from [REDACTED]
18 to Mr. Garlinghouse, copying you, on November 3rd,
19 2018?

20 A. Yes, that's right.

21 Q. And I want to refer you to the third
22 page of Exhibit 42.

23 Do you see how there's an e-mail from

24 [REDACTED] at [REDACTED] to you?

25 A. Yes.

1 Q. And she's referencing a panel discussion
2 at Georgetown University?

3 A. That's right.

4 Q. And did you speak on a panel at
5 Georgetown University in November 2018?

6 A. I did.

7 Q. And who was Ms. [REDACTED]?

8 A. She was a reporter from [REDACTED]

9 Q. How did you know her?

10 A. Just from around the industry. She was
11 writing about crypto and blockchain.

12 Q. Had you previously given interviews to
13 her?

14 A. Yes.

15 Q. And Ms. [REDACTED] was advising you that
16 Mr. Hinman was supposed to speak at the Georgetown
17 panel before you were supposed to speak?

18 A. That's right.

19 Q. And did you understand that Mr. Hinman
20 was the director of the SEC's Division of
21 Corporation Finance?

22 A. I did.

23 Q. And Ms. [REDACTED] writes "Everyone's
24 waiting on an SEC pronouncement" regard -- "Re:
25 Classification of XRP"?

1 A. Yep, I see that.

2 Q. Was Ripple expecting a pronouncement
3 from Mr. Hinman at the November Georgetown event?

4 A. Not that I was aware of. I forwarded it
5 to our head of communications and Brad for more
6 context.

7 Q. And who was the head of communications?

8 A. [REDACTED]

9 Q. And in November 2018, were you aware
10 that earlier in the year, Mr. Hinman had given a
11 speech where he stated his belief that Ether was
12 not currently being offered or sold as a security?

13 A. I was, yes.

14 Q. Had you read the speech?

15 A. Yes.

16 Q. Did you attend the speech when it was
17 given?

18 A. No.

19 Q. In Mr. Hinman's speech I just referred
20 to, did he mention XRP?

21 A. Not that I recall.

22 Q. So I want to now refer you to the second
23 page of Exhibit 42.

24 A. Uh-huh.

25 Q. And it looks like Mr. Garlinghouse is

1 giving you some guidance regarding the Georgetown
2 panel?

3 A. Yes.

4 Q. And he's instructing you not to engage
5 Mr. Hinman directly?

6 A. Yes, I see that.

7 Q. And he's -- Mr. Garlinghouse is
8 instructing you to use Ripple's most up-to-date
9 talking points?

10 A. Yes.

11 Q. And did those talking points contain a
12 section on the SEC securities classification
13 issue?

14 A. I assume they did. I don't have a copy
15 of this.

16 Q. And we -- remember, we had looked at a
17 few previous talking points and e-mails where it
18 contains guidance from Ripple for Ripple
19 spokespersons to say it's up to the SEC to decide
20 whether XRP is a security?

21 A. That's correct.

22 Q. And it looks like Mr. Garlinghouse is
23 now advising you on November 2nd, 2018, not to use
24 that talking point anymore?

25 A. Yes, I see that.

1 Q. Do you have an understanding of why
2 Mr. Garlinghouse wanted you to not use that
3 talking point at the panel Mr. Hinman was going to
4 be speaking on?

5 MR. WARD: Objection to form.

6 A. I don't have the full context of why
7 he's giving that instruction.

8 Q. Did you have an -- any understanding?

9 A. No.

10 Q. Did you agree with him?

11 A. I followed the instructions I got.

12 Q. Well, did you think it was a good
13 instruction not to use the talking point about the
14 SEC ultimately deciding?

15 MR. HECKER: Objection to form.

16 A. I didn't have the context or -- or
17 expertise to say if that was good or not, so I was
18 just trusting what I was getting from leadership.

19 Q. Then if you can go to the first page of
20 Exhibit 42, please? And do you see how in the
21 November 3rd, 2018, 11:43 a.m. e-mail, Ms. [REDACTED]
22 writes about the possibility of having an attendee
23 at the conference directly asking Mr. Hinman
24 whether he considered XRP to be a security?

25 A. Yes, I see that.

1 Q. And then you respond by telling her that
2 Ripple is going to have a consultant from [REDACTED]
3 [REDACTED] at the event?

4 A. Yes.

5 Q. What was [REDACTED]?

6 A. FS Vector is a consulting firm focused
7 on FinTech based in D.C.

8 Q. And what were they doing at the
9 Georgetown conference?

10 A. I -- I assume attending it given the
11 Georgetown conference was about FinTech. It was
12 relevant to them and their other clients.

13 Q. And you said you ended up attending the
14 conference, right?

15 A. I -- I spoke at this one, yeah.

16 Q. And was it like a panel discussion where
17 a group of presenters were up on stage or was it
18 like more of a seriatim, speech after speech?

19 A. It was in a lecture hall, multiple
20 stories, and there was a -- a panel or a dais at
21 the front. Hinman spoke at a podium and then my
22 panel was four chairs, four or five chairs, on the
23 panel.

24 Q. You were up on the podium, too?

25 A. Up on the platform, yeah.

1 Q. On the platform.

2 And did -- was there opportunity for
3 attendees at the panel to ask questions of the
4 speakers?

5 A. There was for my session.

6 Q. What about Mr. Hinman's?

7 A. I can't recall. I was back stage. I
8 saw part of him and -- and then I went back stage
9 to prep for my panel. So I only saw the opening
10 bit of his.

11 Q. Oh, so you were not on the same panel as
12 his?

13 A. No. Hinman gave a speech and then after
14 his speech, I was on a panel.

15 Q. Okay. Did you end up speaking with
16 Mr. Hinman at the conference or at the panel?

17 A. I did not.

18 Q. And did anyone ask -- well, Mr. Hinman's
19 speech at the conference, did he address XRP?

20 A. I don't believe he did. I was back
21 stage prepping with my panel, so I didn't hear his
22 speech as he was giving it.

23 Q. Did anyone ever tell you that Mr. Hinman
24 mentioned XRP at the Georgetown conference?

25 A. No.

1 Q. And did any -- did this lobby -- I'm
2 sorry.

3 Did this consultant from [REDACTED] did
4 they ask the question of Mr. Hinman whether he
5 considered XRP to be a security?

6 A. I don't think we said actually engaged
7 [REDACTED] to ask that question and I don't believe
8 they did.

9 Q. And given all of this uncertainty about
10 the SEC's approach to XRP, why didn't either you
11 or Ripple's consultant ask Mr. Hinman at the
12 conference?

13 MR. HECKER: Objection to form.

14 A. I -- I don't know if Hinman was even
15 taking questions that day. My panel took
16 questions. I don't know about his. His was a
17 speech, formal keynote speech, so I don't know if
18 he took questions or not.

19 Q. Did you ever try and, like, seek him out
20 while you guys were both at the facility?

21 A. No. I was back stage in the green room.
22 I gave my speech and then left the event.

23 Q. Did anyone from Ripple ever ask
24 Mr. Hinman whether he considered XRP to be a
25 security?

1 MR. HECKER: Objection to form.

2 MR. CERESNEY: And also --

3 MR. HECKER: Same instruction
4 regarding discussions with counsel.

5 A. Outside of counsel, did anyone ever?

6 I -- I don't know. Not that I was aware.

7 Q. Were you ever on any other panels or
8 meetings where you were there and Mr. Hinman was
9 there?

10 A. Not that I remember.

11 Q. Have you ever met him personally?

12 A. No.

13 MR. HANAUER: Five.

14 (Whereupon, exhibit is presented
15 and marked SEC Zagone Exhibit RZ-5 for
16 identification.)

17 MR. HANAUER: I've tendered the
18 witness a document labeled Exhibit RZ-5,
19 beginning with a Bates number ending in
20 0623.

21 BY MR. HANAUER:

22 Q. Is Exhibit RZ-5 a copy of an e-mail
23 chain ending in an e-mail you sent to [REDACTED]
24 [REDACTED] on January 25th, 2017?

25 A. That's right.

1 Q. And who is Mr. [REDACTED]?

2 A. Mr. [REDACTED] was on the business
3 development team.

4 Q. At Ripple?

5 A. At Ripple.

6 Q. And do you see Mr. [REDACTED] writes you in
7 the second e-mail from the top of the chain, "Have
8 any central banks said we would be comfortable
9 with digital assets if they were used for XYZ
10 transactions?"

11 A. I see that, yes.

12 Q. And then you write -- respond
13 "Unfortunately, no. In fact, several regulators
14 have said we are fine with everything except XRP?"

15 A. I see that.

16 Q. And who were the regulators that told
17 you that they were fine with everything except
18 XRP?

19 A. Yeah. So the context of this discussion
20 is around Ripple being approved as a vendor,
21 Ripple and our products being approved as a vendor
22 for the financial institutions to use. So our
23 bank clients.

24 The -- in 2017 the com -- we only did
25 that type of regulatory engagement for a

1 commercial deal. So, like, when a bank was
2 signing up to integrate and use one of our
3 products.

4 By this time in 2017, January 2017, the
5 focus of that engagement was xCurrent, the
6 connectivity solution that does not use XRP. So
7 the regulatory engagement for approvals had all
8 been on xCurrent, not xRapid at this point.

9 That's -- given that, that's why it says
10 we have not had approval on XRP, meaning xRapid.

11 Q. Oh, so when you're referring to XRP in
12 the first sentence on Exhibit 5, when you write
13 "XRP," you -- you wanted that term to mean xRapid?

14 A. Yeah. I used XRP in shorthand or
15 generally here to talk about the liquidity
16 solution since we didn't really have a name for it
17 aside from -- Project Xenon was the code name we
18 used for the trial with the banks. And then we
19 had a variety of other names we used. So I was
20 short-handing to say XRP meaning xRapid.

21 Q. And who were the regulators that had
22 told -- conveyed to Ripple that they were fine
23 with everything except for xRapid?

24 A. At this point, we would have engaged --
25 2017. We would have engaged Spain, Mexico, U.S.,

1 Japan, and UK, roughly in that regard, around
2 using X -- a bank using xCurrent, the connectivity
3 solution.

4 So I'm saying in this e-mail, xCurrent
5 regulators have been fine with. We hadn't
6 introduced xRapid with -- which uses XRP into
7 those conversations, so we don't have a -- a
8 definitive, like, thumbs up from a regulator that
9 a bank can use that yet. We hadn't brought that
10 into the discussion.

11 Q. Did any regulators ever tell -- tell
12 Ripple that they were not okay with XRP, the
13 digital asset, as opposed to XRP meaning xRapid?

14 A. No. So this is, like, the -- the
15 context of this was very specific to xRapid
16 approved as a vendor to a financial institution.

17 Q. Did any regulators ever express concerns
18 to Ripple about XRP, the digital asset?

19 A. Not that I'm aware.

20 Q. What was --

21 A. What was the questions? For me to say
22 there were "concerns," I would -- wouldn't use
23 that word.

24 Q. What was Xenon?

25 A. Xenon was a -- one of the pilots that we

1 ran with financial institutions using XRP and
2 xRapid. So that was -- we had maybe 10 or 12
3 banks that were piloting what became xRapid.

4 Q. And tell me about the regulatory
5 uncertainties that came out of that pilot program.

6 A. So when -- an output of the project was
7 a list of areas to further invest in. One was
8 around regulatory uncertainties. That covered, as
9 I recall, things around the ability for a bank to
10 use a crypto asset, a virtual currency, within a
11 payment flow. That was a primary one that our
12 takeaway was, like, is this okay to -- for a bank
13 to use, meaning things around disaster recovery,
14 financial stability, operational resiliency.
15 Your -- your typical vendor questions.

16 Q. And was the lack of regulatory approval
17 the reasons that -- the reason that banks did not
18 want to adopt xRapid?

19 MR. HECKER: Objection to form.

20 A. That's not how I would describe it.
21 We -- we ran a pilot to learn. One of the
22 learnings we had was we need to get more clear on
23 what risk regulators see when they use this type
24 of technology and how we mitigate those risks
25 within the solution. So that was one of the

1 places we -- it was a lesson from that -- that
2 work.

3 Q. And did any United States regulators
4 ever express a -- a view to Ripple on xRapid?

5 A. Yes.

6 Q. Could you tell me about that?

7 MR. HECKER: And, sorry, just the
8 same caveat we've been giving you to the
9 extent the discussion is involving
10 counsel.

11 A. We briefed the OCC annually, the OCC
12 being one of the banking regulators. We briefed
13 them annually from 2017 or 2018 through the end of
14 my time there on both xCurrent and xRapid. So
15 there was a -- general education meetings. This
16 is -- the pilots are running, this is what we're
17 learning.

18 So there was a series of those meetings.
19 We had similar meetings with the Federal Reserve
20 that were more educational in context.

21 The second type of work we did around
22 xRapid was client specific. So in the last nine
23 months of my time at Ripple, I worked on a deal
24 with MoneyGram. MoneyGram was using xRapid. My
25 head of the public announcement, part of my role

1 was to brief MoneyGram's regulators ahead of time,
2 introducing Ripple as a vendor to MoneyGram,
3 letting them know what the product would be, what
4 the flow of funds would be, and to show that we
5 were proactively thinking around mitigating risk
6 in the arrangement.

7 We briefed the Texas, New York, and I
8 believe California regulators. We -- I also
9 briefed the Conference of State Bank Supervisors.
10 The feedback from those -- those briefings was
11 that they had no issues and that we were clear to
12 proceed.

13 Q. And did the SEC ever give Ripple a clear
14 to proceed message?

15 A. The focus of this was around vendor due
16 diligence for the bank, for MoneyGram, the
17 financial institution. So we were focused on
18 the -- MoneyGram's financial regulators.

19 Q. Right. And I -- I just want to make a
20 clear record on this. You had listed some
21 regulators that had given Ripple the, I think your
22 words were, "clear to proceed" on xRapid.

23 Did the SEC ever give such a message or
24 approval Ripple regarding xRapid?

25 MR. HECKER: Objection to form,

1 foundation.

2 MR. CERESNEY: Objection.

3 A. I wasn't aware of any guidance from the
4 SEC to Ripple.

5 MR. HANAUER: Eleven.

6 MR. HECKER: Can we take a --

7 THE WITNESS: I'm okay.

8 MR. CERESNEY: You good? You
9 know what? Why don't we take five
10 minutes?

11 MR. HANAUER: Okay.

12 MR. CERESNEY: Off the record.

13 THE VIDEOGRAPHER: Going off the
14 record, 3:51.

15 (Whereupon, a recess is taken.)

16 THE VIDEOGRAPHER: Okay. We're
17 back on the record at 4:03.

18 (Whereupon, exhibit is presented
19 and marked SEC Zagone Exhibit RZ-11 for
20 identification.)

21 BY MR. HANAUER:

22 Q. Mr. Zagone, do you have Exhibit 11 in
23 front of you?

24 A. I do.

25 Q. And Exhibit 11 is a copy of an e-mail

1 that you sent to various Ripple personnel on May
2 5th, 2017?

3 A. That's right.

4 Q. And -- and the folks you were e-mailing,
5 was that Ripple's senior leadership?

6 A. Yes, it was.

7 Q. And you attached to your -- your e-mail
8 a document called "XRP Overview for Regulators"?

9 A. Yes.

10 Q. Okay. And that's one of the documents
11 we've looked at earlier today?

12 A. Yes.

13 Q. And you write in your e-mail at the top
14 of Exhibit 11, under the -- after the "XRP" in
15 bold, "I've been busy driving XRP use case
16 discussions. The narrative in the attached white
17 paper is working very well (except in the United
18 States)."

19 What did you mean when you wrote that
20 you were "busy driving XRP use case discussions"?

21 A. The use case of how digital assets could
22 be used to connect fiat currencies more
23 efficiently.

24 Q. And when you talk about XRP there, are
25 you using that interchangeably with the product

1 that would become xRapid?

2 A. Correct, yes.

3 Q. And what did you mean when you wrote

4 "The narrative in the attached white paper is

5 working very well (except in the U.S.)"?

6 A. I can't recall that, what my logic was

7 there.

8 THE WITNESS: Do you need me to

9 repeat that?

10 THE REPORTER: No.

11 A. I can't recall that and I don't --

12 there's not much context around it.

13 Q. Who were you -- well, first of all, why

14 were you presenting use case discussions to the

15 United -- in the United States?

16 A. So this is early 2017. The -- this was

17 still an early day for crypto, particularly as it

18 was being adopted in institutional use cases.

19 So we -- we had a lot of effort -- I'd

20 say most of the market conversations, including

21 the regulatory conversations, were focused on the

22 consumer use of crypto. It can be used instead of

23 the U.S. dollar or fiat currencies. So consumers

24 using, say, bitcoin to buy their coffee. We

25 wanted to ensure that one con -- the market

1 understood there were other use cases beyond
2 replacing fiat currencies, specifically Ripple's
3 XRP to connect fiat currencies more efficiently
4 and that regulation reflected that.

5 Q. And were -- in May 2017 were you having
6 difficulty communicating those use cases in the
7 United States?

8 MR. WARD: Objection to form.

9 A. According to this e-mail, I was.

10 Q. And who were you presenting those use
11 case discussions to in the United States?

12 A. I can't tell if the clarification,
13 except in the U.S., if that was client-driven
14 to -- to banks or if that was meant to regulators.
15 I -- I can't recall.

16 Q. Did you consider regulators to be your
17 clients?

18 A. We did have some central banks that also
19 served as regulators that were our clients, yes.

20 Q. Were U.S. banks Ripple's clients?

21 A. U.S. banks were Ripple's clients, yes.

22 Q. What U.S. banks were Ripple's clients?

23 A. We had relationships with [REDACTED]
24 [REDACTED] who served on our global payments steering
25 group. That was the largest of our U.S. bank

1 clients. We also had an engagement with [REDACTED] I
2 also worked with [REDACTED] U.S.

3 Q. And what products or services did Ripple
4 sell to these U.S. banks?

5 A. Is this specific to the 2017 time frame
6 or -- or more broadly?

7 Q. More broadly.

8 A. So we sold -- and I have to say I would
9 add MoneyGram to that list as well. That came
10 later.

11 We were working with those -- all those
12 clients on xCurrent and xRapid.

13 Q. And did Ripple ever sell xCurrent to --
14 to a U.S. bank -- or, I'm sorry. Did Ripple ever
15 sell xRapid to a U.S. bank?

16 A. We sold xRapid, our largest partner for
17 xRapid was MoneyGram. Not a bank, but a financial
18 institution.

19 Q. So which banks did Ripple sell xRapid to
20 in the United States?

21 A. When I was leaving -- in my time at
22 Ripple, first in connectivity, which that was the
23 primary problem for banks. We talked about that
24 earlier today. So we sold them xCurrent first so
25 they could have connectivity. After they

1 optimized that, they can add xRapid for liquidity.

2 MoneyGram and -- and money transmitters
3 don't have a connectivity problem, so they
4 basically fast track straight to the liquidity
5 solution, xRapid. So that's why there's a
6 differentiation in how we deployed our product to
7 be at a bank versus a nonbank.

8 Q. So I just -- are money transmitters
9 banks?

10 A. No. They're financial institutions.

11 Q. So what banks did Ripple sell xRapid to?

12 A. In my time there, we had not sold xRapid
13 to banks yet. They were still deploying the
14 xCurrent solution, which is the prerequisite.

15 (Whereupon, exhibit is presented
16 and marked SEC Zagone Exhibit RZ-16 for
17 identification.)

18 MR. HANAUER: I've tendered the
19 witness a document labeled Exhibit RZ-16,
20 beginning with the Bates number ending in
21 1049.

22 BY MR. HANAUER:

23 Q. What is Exhibit 16?

24 A. This is a regulatory -- a strategy plan
25 for my division at Ripple.

1 Q. Did you -- what was your role in
2 preparing it?

3 A. I created the steps.

4 Q. And what does "GTM countries" mean?

5 A. GTM stands for go to market. So that's
6 where we were targeting launching our products.

7 Q. And can I refer you to page 1058?

8 What -- what do these tables represent?

9 A. These tables are a click-through showing
10 a timeline of our regulatory engagement for our
11 two products, xCurrent, and here XRP I'm
12 short-handing for xRapid.

13 Q. Okay. So on these tables in Exhibit 16,
14 XRP meant xRapid?

15 A. Correct.

16 Q. And when you refer to engagement status,
17 that means regulatory engagement status?

18 A. Yes.

19 Q. And for the United States, what
20 regulators were being covered by this -- what
21 would be referred to in this -- these tables?

22 A. So for the U.S. -- I can't really tell
23 the colors we used here.

24 So this was focused on enabling a bank
25 or financial institution to go in to leverage our

1 product.

2 So the regulators that we would speak to
3 were the bank provincial regulators, so Federal
4 Reserve, FDIC, OCC, and the States.

5 Q. And so let's look at the January 1, 2016
6 engagement status.

7 A. Uh-huh.

8 Q. For USA XRP, which of -- I think it's
9 not the -- the lighter shade of the three options,
10 but which of the two darker shades do you think is
11 reflected on that table for USA XRP?

12 A. It's the far right color indicating we
13 either had limited engagement or that jurisdiction
14 has a negative view.

15 Q. And what was -- what did that mean for
16 the USA as of January 1st, 2016?

17 A. That we had limited engagement. We --
18 in 2016 we hadn't engaged fully on the xRapid
19 product as we were still in development of that.
20 That was pretty much true of all the countries.

21 Q. And then let's look at page 1059.

22 And can I -- why -- why were you using
23 XRP as shorthand for xRapid in these and other
24 documents?

25 A. We didn't -- the name evolved over time

1 and it kept switching. So we had called it
2 initially Liquidity Solution, moved to xRapid, it
3 was rebranded to On-Demand Liquidity, or ODL. It
4 was evolving, and the product wasn't final. We
5 were still, particularly in 2016 -- what does this
6 go through? 2019? It was still evolving in here
7 so to -- whereas xCurrent was a little more
8 standard. I just used shorthand.

9 Q. Okay. So let's look at the 2017 table.

10 What's the engagement status for the
11 United States for XRP?

12 A. It's moved to the middle color. I
13 believe it was a yellow. That indicates we've
14 done some initial engagement but more is needed.

15 Q. I apologize.

16 A. So that yellow color indicates we've
17 done initial engagement, more is needed. We have
18 not had a client approved to use that product in
19 the jurisdiction yet.

20 Q. And let's look at the next page, 1060.
21 Again I'll ask you about the table "USA XRP."
22 What was the engagement status?

23 A. Unchanged.

24 Q. And then the next page, 1061?

25 A. For XRP or xRapid, again, unchanged.

1 Q. Still no -- why was it that the goal was
2 not to -- was -- why was it that there was not a
3 goal to have xRapid approved in the United States
4 as of January 1st, 2019?

5 A. We were working with MoneyGram in that
6 time period to integrate the product, to -- for --
7 by the way I color coded this, I wouldn't move it
8 to green until we had a client that was ready to
9 go with the product and we had engaged with the
10 regulator for approval.

11 As of January 1, 2019, we were -- we
12 were still -- we were working with MoneyGram on
13 the details of the deal, but we hadn't gone to the
14 regulator yet.

15 Q. No regulatory approval yet?

16 A. Correct.

17 Q. And for MoneyGram, who was the reg --
18 who were -- who were the regulators that Ripple
19 was seeking approval from?

20 A. We were targeting -- it would be
21 MoneyGram's regulators, which MoneyGram is
22 regulated by the States. So the 50 State
23 regulators. The State banking regulators.

24 Q. Did the reg -- did -- Exhibit 16, did
25 that in any way refer or was intended to refer to

1 the SEC and its discussion of regulators?

2 MR. CERESNEY: The whole exhibit?

3 MR. HANAUER: The whole exhibit,
4 correct. Actually, you know, let me
5 clarify that. I don't need you to --

6 MR. CERESNEY: Yeah, it's a
7 long --

8 MR. HANAUER: -- read -- I don't
9 want you to have to look at the whole
10 exhibit.

11 BY MR. HANAUER:

12 Q. The tables we talked about on pages 1058
13 through 1061, when you were speaking about
14 regulatory engagement, did these tables refer in
15 any way to the Ripple's regulatory engagement
16 efforts with the SEC?

17 A. No.

18 MR. HANAUER: Twenty-one.

19 (Whereupon, exhibit is presented
20 and marked SEC Zagone Exhibit RZ-21 for
21 identification.)

22 MR. HECKER: Thanks.

23 MR. HANAUER: I tendered the
24 witness a document labeled Exhibit RZ-21
25 with a Bates number ending in 6451.

1 BY MR. HANAUER:

2 Q. And is Exhibit 21 a copy of an e-mail
3 you sent to Monica Long, [REDACTED] and [REDACTED]
4 [REDACTED] on August 8th, 2018?

5 A. That's right, yes.

6 Q. And who is [REDACTED]

7 A. I don't know [REDACTED] He appears to
8 work at [REDACTED] which was a -- I believe a
9 consulting firm that our -- a consulting firm or a
10 PR firm that our communications team used.

11 Q. What's this discussion about a political
12 inter -- Politico interview with [REDACTED]?

13 A. It looks like the story was about the
14 risk of 51 percent attack against bitcoin. That's
15 an attack where a majority of the mining power
16 take over the control of bitcoin.

17 Q. And who is [REDACTED]?

18 A. [REDACTED] was the -- I believe his
19 title is executive director of [REDACTED] which
20 is a think tank in D.C.

21 Q. And do you see right -- [REDACTED] who
22 we're trying to court, is a public spokesperson"?
23 Why -- why was Ripple trying to court Mr. [REDACTED] as
24 a public spokesperson?

25 A. So [REDACTED] was seen as -- [REDACTED] and [REDACTED]

1 [REDACTED] were seen as thoughtful voice in the policy
2 circles in D.C. on a variety of issues. They were
3 one of the first to speak publicly on policy
4 issues back in 2014/2015.

5 Q. What -- what message did you want
6 Mr. [REDACTED] to convey publicly?

7 A. Up until this point, [REDACTED] had not
8 spoken about XRP. So we were working with [REDACTED]
9 [REDACTED] to integrate XRP into their -- into their
10 research network.

11 Q. And then do you see in the
12 second-to-last paragraph, you write "Our approach
13 has been to show that BTC, ETH and XRP are very
14 similar"? What are you referring to there?

15 A. It appears that around the -- I'm
16 speaking that they're very similar in a state of
17 decentralization. In that conversation,
18 decentralization is often brought up. That
19 they're -- their BTC, ETH and XRP are all
20 decentralized assets.

21 Q. And this was a -- a message that Ripple
22 was trying to convey to the public?

23 A. Ripple was trying to convey a message
24 that -- not that we were trying. Ripple was
25 stating that XRP is decentralized, much like Eth